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1 A. My attorney was down the stairs, away from me.

2 Q. What's his name?

3 A. John Wayne Milton.

4 Q. Now it's true, isn't it, that none of the other  
5 people that are involved in this incident from December  
6 6th or December 7th, were charged?

7 MR. MCCLELLAN: I object to being leading.  
8 And I object; he wouldn't have any knowledge of that  
9 personally.

10 THE COURT: Sustained.

11 Q. (BY MR. HILL) You said that Detective King is  
12 the one that was talking to you on December 10th?

13 A. Yes, sir.

14 Q. What was said to you?

15 MR. MCCLELLAN: I object to hearsay, Your  
16 Honor.

17 THE COURT: Sustained.

18 Q. (BY MR. HILL) Was anything said to you about  
19 the incident from --

20 MR. MCCLELLAN: Object to leading.

21 THE COURT: Sustained.

22 MR. HILL: Thank you. I have no further  
23 questions, Judge. Pass the witness.

24 MR. MCCLELLAN: I have nothing further,  
25 Your Honor.

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1 10th, 1998?

2 A. Yes, I did.

3 Q. And during that interview, did he indicate to  
4 you that he wanted to speak to you, only off the record?

5 A. That's correct.

6 Q. During this off-the-record conversation, did  
7 the defendant, Charles Mamou, tell you about the events  
8 of December the 6th, 1998?

9 A. Yes, he did.

10 Q. Can you tell us basically what you recall him  
11 telling you happened in this off-the-record statement?

12 A. When we finally got around to talking about the  
13 shooting there, he told us that he had originally tried  
14 to set up a dope deal with Kevin Walters; and they had  
15 met over at Northline Mall at 2:45 in the afternoon, but  
16 it just didn't happen. And then later on that night he  
17 got a phone call from Kevin Walters, and they met over  
18 at the Bennigan's restaurant over on the South Loop.

19 At that point he and Dion Holley went out  
20 to the car, to Dion's car. And Dion popped the hood and  
21 showed him a plastic bag that was supposedly a kilo of  
22 cocaine. They went back inside. Then they got in the  
23 car and drove around for a while. He indicated that a  
24 third car was following around the car that he was in,  
25 and the car that Kevin Walters, Dion Holley, Terrence

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1 THE COURT: You may stand down.

2 What says the defense?

3 MR. HILL: May I have just a moment?

4 We would rest, Your Honor.

5 THE COURT: What says the State?

6 MR. MCCLELLAN: State would call, briefly,  
7 Detective Ted Bloyd.

8 THE COURT: Proceed, please.

9 TED C. BLOYD,  
10 having been first duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. MCCLELLAN:

13 Q. State your name for the record, please?

14 A. Ted C. Bloyd.

15 Q. You're the same Ted Bloyd who testified earlier  
16 in this case?

17 A. Yes, I am.

18 Q. Let me direct your attention back to December  
19 10th of 1998. Did you have an occasion to go to  
20 Lafayette, Louisiana?

21 A. Yes, I did.

22 Q. And for what purpose did you go to Lafayette,  
23 Louisiana?

24 A. To interview Charles Mamou.

25 Q. Did you interview Charles Mamou on December

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1 Gibson, and Mary Carmouche was in.

2 They then found the secluded spot. They  
3 pulled the cars together as if it was one car giving  
4 another car a boost. And then this mysterious third car  
5 drove by. Mr. Mamou heard shots, and he jumped in his  
6 car and drove away.

7 Q. Did he ever admit to you shooting anybody there  
8 at that location?

9 A. No, he did not.

10 Q. Did he ever admit to you ever having a gun in  
11 his possession at that location?

12 A. No, he did not.

13 Q. Did he ever admit to you trying to rip anybody  
14 off at anytime during this deal?

15 A. No.

16 Q. He just talked about some third car, unknown,  
17 the drive by shooting happened, and he drove away?

18 A. Yes.

19 Q. Was that the extent of what he told you about  
20 the events that surrounded what we're here about,  
21 December 6th, 1998?

22 A. Yes, sir.

23 Q. And you talked to him on that day. Who all was  
24 present during that conversation?

25 A. My partner, Officer King, Detective Thad

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1 Badeaux of the Lafayette Sheriff's Office.

2 Q. Okay. And had you talked to Detective Badeaux  
3 prior to talking to the defendant?

4 A. Yes, I did.

5 Q. Do you know whether or not Detective Badeaux  
6 had learned anything from Charles Mamou?

7 MR. HILL: Judge, we're going to object to  
8 any hearsay.

9 MR. MCCLELLAN: I don't think it will be a  
10 hearsay question.

11 THE COURT: All right.

12 Q. (BY MR. MCCLELLAN) Do you know whether or not  
13 Detective Badeaux had talked to Charles Mamou about the  
14 events of December 6th prior to your arrival?

15 A. Yes.

16 MR. MCCLELLAN: I'll pass the witness.

17 CROSS-EXAMINATION

18 BY MR. HILL:

19 Q. Detective Bloyd, what time did you get out  
20 there to Louisiana to interview?

21 A. About 1:00 in the afternoon when we got there,  
22 and it was 2:00 o'clock when we started the interview.

23 Q. Okay. And do you recall Mr. Mamou telling you  
24 that he wanted to visit with Mr. Milton, his attorney;  
25 that he was downstairs in the police department?

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1 meant, and that was the full extent of what you were  
2 conveying to him?

3 A. That's what he was conveying to us.

4 Q. Okay. And how long was it you talked to him  
5 from 2:00 o'clock? When was your conversation over  
6 with?

7 A. It was almost two hours.

8 Q. Did you share any information with him  
9 regarding your investigation?

10 A. Yes, I did.

11 Q. Okay. Did you tell him how the people had been  
12 killed? By that, I mean, did you tell him people had  
13 been killed?

14 A. Yes.

15 Q. Okay. Did you share with him items of physical  
16 evidence?

17 A. Yes.

18 Q. Did you share with him the names of streets or  
19 locations within Harris County, Texas, where these  
20 incidents had taken place?

21 A. No, I don't think we talked about names of  
22 streets.

23 Q. Did you share with him the general information  
24 that would acquaint him with the allegations being made  
25 against him?

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1 A. No.

2 Q. Did you ever meet Mr. Milton after you were  
3 done talking to Mr. Mamou?

4 A. I have absolutely no idea who Mr. Milton is.

5 Q. Did you ever meet an individual that  
6 represented himself to be an attorney for Mr. Mamou at  
7 any point in time while you were out there in Louisiana?

8 A. No.

9 Q. And during this time period when you're talking  
10 to him off the record, just prior to that did you give  
11 him any legal warnings?

12 A. Yes, I did.

13 Q. What legal warning did you give him?

14 A. The standard Miranda warnings.

15 Q. Okay. And it's your testimony that after  
16 giving him the legal warnings at that time, he said he  
17 wanted to talk to you off the record?

18 A. That's correct.

19 Q. And did you tell him that you would talk to him  
20 off the record?

21 A. Yes.

22 Q. Okay. What did you mean to convey to him when  
23 you said, Yeah, I'll talk to you off the record?

24 A. That there was no recorded statement.

25 Q. Is that -- you thought that that's what it

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1 A. Yes.

2 Q. And do you recall whether or not you showed him  
3 any photographs?

4 A. Yes.

5 Q. Do you recall whether or not you showed him  
6 photographs of physical evidence, as well as people?

7 A. Just photographs of individuals.

8 Q. Around where were those individuals -- the  
9 photographs you were showing them, were those  
10 photographs from the morgue, or were they photographs  
11 from like we've had introduced of people?

12 A. They were Polaroid photos taken of people at  
13 the police station.

14 Q. Okay. And did -- were they arranged in a way  
15 that made it look like a photospread?

16 A. No.

17 Q. And did you ask whether or not he could  
18 identify any of those individuals?

19 A. Yes.

20 Q. Was your partner, Detective King, speaking to  
21 Mr. Mamou at any time?

22 A. Yes.

23 Q. Was Thad Badeaux?

24 A. Yes.

25 Q. So the three of you were with him for

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1 approximately two hours, from 2:00 p.m. to 4:00 p.m.,  
2 talking about the circumstance of the incidents here in  
3 Houston?

4 A. Yes, sir.

5 Q. When you first went there and you talked to  
6 Mr. Mamou, did you tell him that he had been charged  
7 with the offense of capital murder?

8 A. No, sir.

9 Q. What offense did you tell him he had been  
10 charged with?

11 A. At that point he had not been charged with  
12 capital murder. He had a warrant for aggravated assault  
13 at that time.

14 Q. Did you tell him that he was merely being  
15 charged with aggravated assault out of Houston?

16 A. No, sir, we told him we were investigating a  
17 homicide.

18 Q. Do you recall telling him that if he confessed  
19 to the shootings of the three individuals, Kevin Walter,  
20 Terrence Dodson, and Dion Holley, you could get  
21 self-defense under Texas law? Do you recall talking to  
22 him about self-defense?

23 A. Yes, sir.

24 Q. All right. And when was it that you first told  
25 him that he was not being charged with aggravated

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1 talk?

2 A. Yes.

3 Q. Now that off-the-record conversation doesn't  
4 take two hours, does it?

5 A. Sir?

6 Q. That off-the-record conversation on his part  
7 that you're relating to or referring to doesn't take two  
8 hours, did it?

9 A. Yes, sir, it did.

10 Q. A lot of that time is spent with the three of  
11 you talking to him and explaining what's likely to  
12 happen to him if he doesn't confess, right?

13 A. A lot --

14 MR. MCCLELLAN: I object to hearsay as to  
15 what they told him.

16 THE COURT: Sustained.

17 Q. (BY MR. HILL) Did you tell him what was going  
18 to happen to him if he did confess?

19 MR. MCCLELLAN: I object to hearsay.

20 THE COURT: Overruled.

21 Q. (BY MR. HILL) Do you recall telling Mr. Mamou  
22 he was going to get the death penalty if he didn't  
23 confess?

24 A. No, sir, I told him he was going to be charged  
25 with it.

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1 assault, but was actually likely to be charged with  
2 capital murder?

3 A. I don't think we ever told him that he was --  
4 had been charged with aggravated assault. Those charges  
5 had not been -- it was a probable cause warrant for  
6 aggravated assault. So he technically had not been  
7 charged.

8 Q. Are you telling this jury when a Judge issues a  
9 warrant for somebody's arrest based upon probable cause  
10 to believe an offense is committed, that that doesn't  
11 constitute an offense?

12 A. No, sir.

13 Q. Okay. But you conveyed to Mr. Mamou that some  
14 Judge in Harris County signed a warrant for his arrest,  
15 alleging that he had committed, what, a second degree,  
16 third degree felony of aggravated assault?

17 A. No, sir, I don't know that we discussed the  
18 face of the warrant for his arrest.

19 Q. Okay. Well, when you went to talk to him --  
20 and you obviously felt it was important enough to give  
21 him his legal warnings. What did you tell him he was  
22 being questioned about?

23 A. For a murder.

24 Q. And it's after you warn him of all these things  
25 that he says he wants to go off the record with you and

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1 Q. He was going to be charged with the death  
2 penalty?

3 A. Capital murder.

4 Q. So when is it that you told him that? See,  
5 we've got you talking to him for two hours. And first  
6 you're not really sure if he's charged with aggravated  
7 assault, but you give him legal warnings. When do you  
8 tell him he's going to be charged with capital murder?

9 A. During that conversation we let him ask a  
10 number of questions, and he pried us for a lot of  
11 information, trying to come up with a scenario to fit  
12 those facts.

13 Q. Oh, really. He pried the information out of  
14 you?

15 A. Well, yes. It's not really pry.

16 Q. How did Mr. Mamou pry information out of a  
17 trained homicide detective?

18 A. Well, we allowed ourselves to be pried. We  
19 gave him quite a bit of information just to see what he  
20 would do with it. And finally we reached the point, I  
21 said, Okay. Now it's your turn to tell us what  
22 happened. And at that point is when he came out with  
23 this story of the third car.

24 Q. Now interestingly, after you give an individual  
25 information that only homicide detectives would know, a

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1 person could recite facts like that as if they knew  
2 those facts, couldn't they?  
3 MR. MCCLELLAN: Object to what they could  
4 do, Your Honor.

5 THE COURT: Sustained.

6 Q. (BY MR. HILL) You're telling this jury that  
7 you gave the facts of your investigation, you showed  
8 photographs, you talked about details to Mr. Mamou; and  
9 then he was able to, in turn, tell you information using  
10 those facts, correct?

11 A. Yes.

12 MR. HILL: I have no further questions.

13 REDIRECT EXAMINATION

14 BY MR. MCCLELLAN:

15 Q. The warrant that was outstanding was for  
16 aggravated robbery, was it not?

17 A. Yes, it was.

18 Q. Not aggravated assault?

19 A. Correct.

20 Q. And that warrant had been procured prior to you  
21 going into Howard Scott's apartment earlier on, on  
22 advice of the D.A.'s Office, that you need a warrant  
23 before arresting him; you couldn't go in there and  
24 arrest him with nothing?

25 A. That's correct.

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1 Q. Now did he just recite back to you the thing  
2 that you told him whenever he told you what happened?

3 A. No, sir.

4 Q. But did you tell him some mysterious third car  
5 drove by?

6 A. No, sir.

7 Q. Can -- how would you describe Charles Mamou  
8 during that interview?

9 A. He was very alert, upbeat, almost cocky, very  
10 cool.

11 Q. Who was controlling the conversation, if you  
12 know? Do you have an opinion?

13 A. Myself and Officer King did most of the talking  
14 there. A lot of it, though, was in response from Mr. --  
15 questions from Mr. Mamou.

16 Q. Was he asking questions about, you know, what  
17 are y'all talking about? When you first told him you  
18 were there about some murders, did he say -- I mean,  
19 what was his response to that? Did he say he knew  
20 anything about it?

21 A. Yes, he did. He was upset that his name had  
22 been put out on the air in relation to this murder, that  
23 the people involved were connected to Rap-a-lot Records,  
24 and he was afraid of some retaliation.

25 Q. Okay. So he never, at any time, admitted to

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1 Q. And the probable cause warrant there just  
2 says -- it gives you enough information to question --  
3 to arrest him for questioning?

4 A. Yes, sir, that's right.

5 Q. Then when you're in Louisiana on December the  
6 10th, 1998 -- first of all, you don't file the capital  
7 murder charge, do you?

8 A. No, sir.

9 Q. That's done by Detective Novak?

10 A. Yes, sir, that's right.

11 Q. And if they were filed on December 10th, that  
12 would be in Louisiana?

13 A. Yes, it would.

14 Q. Possible things happened here that you don't  
15 find out about till you get back, right?

16 A. Yes, sir.

17 Q. So when you're discussing this case with  
18 Charles Mamou, Jr., any doubt left in his mind?  
19 Whenever you talk to him, you're telling him you're  
20 talking about a double murder, two people being killed?

21 A. Yes, sir.

22 Q. Okay. Kidnapping/murder, as well as killing  
23 Terrence Gibson, and also, the killing of Mary  
24 Carmouche?

25 A. Yes, sir.

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1 you any type of involvement in this crime, such as  
2 shooting anybody or anything?

3 A. No.

4 MR. MCCLELLAN: I'll pass the witness,  
5 Your Honor.

6 RECROSS-EXAMINATION

7 BY MR. HILL:

8 Q. Okay. Detective, let me just make sure we have  
9 this real clear. You understand -- have you ever sworn  
10 out a probable cause statement for a warrant?

11 A. Yes, sir.

12 Q. And part of the language that's used in that  
13 that you have to swear to under oath before a Judge here  
14 or some other jurisdiction says that you have reason to  
15 believe and do believe that an offense has been  
16 committed; and the person you're asking for the warrant  
17 for committed it, correct?

18 A. That's right.

19 Q. So it's a little bit more than just permission  
20 to go and maybe question somebody. You're telling a  
21 Judge, a District Judge in this case, that I believe an  
22 offense has been committed and I believe that the person  
23 that committed it in this case is Charles Mamou,  
24 correct?

25 A. Yes, sir.



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1 Q. And that decision had already been made on your  
2 part. Otherwise, you wouldn't have sworn under oath to  
3 a District Judge asking him to allow you to arrest  
4 somebody, correct?

5 A. Yes, the decision was made to arrest him, yes.

6 Q. And the decision had been made by you that that  
7 was the suspect in the case. That was the person that  
8 was responsible, in your opinion, for the deaths that we  
9 are here for today?

10 A. Yes.

11 Q. All right. So at that point you have ruled out  
12 that anybody else is responsible in all or in part for  
13 the deaths of both Terrence Gibson and Mary Carmouche,  
14 correct?

15 A. We did not have any other information to  
16 indicate otherwise.

17 Q. Okay. But you had a whole host of names that  
18 were floating out there as possible suspects in this  
19 case, correct?

20 A. Not a whole host, no.

21 Q. All right. Did you get probable cause warrants  
22 to arrest anybody else that could have been implicated  
23 in this case other than Charles Mamou?

24 A. In regards to one particular person, it was not  
25 necessary.

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1 A. Yes.

2 Q. Now let's talk just briefly about you going to  
3 Louisiana. You have a probable cause warrant to arrest,  
4 all right? What is your goal in going there to see  
5 Charles Mamou. As a detective, as a homicide detective,  
6 what is the goal?

7 A. To obtain a confession and recovery of  
8 evidence.

9 Q. Right. And you didn't obtain a confession, did  
10 you?

11 A. No.

12 Q. Despite being with him for two hours and  
13 showing the photograph and giving him information about  
14 the case, right?

15 A. Yes.

16 MR. HILL: No further questions.

17 MR. MCCLELLAN: If I might, Your Honor.

18 REDIRECT EXAMINATION

19 BY MR. MCCLELLAN:

20 Q. You did not, yourself, draw up the arrest  
21 warrant that was issued on the 8th of December for  
22 Charles Mamou, Jr., did you?

23 A. No, sir.

24 Q. You're not the affiant on this, are you?

25 A. No, sir.

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1 Q. For those individuals who were involved in the  
2 allegations that arose at Lantern Point on December 6th  
3 of 1998, none of those individuals were arrested for any  
4 type of offense, correct?

5 A. No, sir, they were ruled out.

6 Q. Okay. Hang on. They were ruled out for the  
7 murder, correct, in your opinion?

8 A. Yes.

9 Q. You're not telling this jury that they weren't  
10 engaged in conspiracy to commit any number of offenses,  
11 are you?

12 MR. MCCLELLAN: I object, Your Honor.  
13 That's irrelevant and calls for speculation and  
14 conclusion -- legal conclusion on the part of this  
15 witness.

16 THE COURT: If you understand the  
17 question, you can answer it.

18 Q. (BY MR. HILL) You agree several of those  
19 people engaged in conspiracy?

20 A. At this particular time, there was only one  
21 other person that we had knowledge of that could be  
22 considered as being a conspirator.

23 Q. And that was?

24 A. Samuel Johnson.

25 Q. Bug Johnson?

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1 Q. Who --

2 MR. HILL: Judge, I'm going to object to  
3 him asking to have him review it if he wasn't the  
4 affiant on it.

5 THE COURT: He hasn't asked him yet.

6 MR. MCCLELLAN: Well, I'm going to ask him  
7 to review it.

8 THE COURT: To refresh his memory, we  
9 assume?

10 MR. HILL: Who knows? It's clear he was  
11 out in Louisiana on December 10th.

12 THE COURT: All right. Y'all are going to  
13 confuse me in a minute. You're saying December 8th.

14 MR. MCCLELLAN: That's correct.

15 MR. HILL: I'm sorry. For the warrant.

16 MR. MCCLELLAN: This arrest warrant was  
17 secured on December 8th.

18 MR. HILL: I'm sorry. Is Mr. McClellan  
19 testifying?

20 Q. (BY MR. MCCLELLAN) Can you tell us what date  
21 this arrest warrant was secured?

22 THE COURT: Thank you.

23 THE WITNESS: 8th day of December, 1998.

24 Q. (BY MR. MCCLELLAN) What were you getting ready  
25 to do on the 8th day of December that caused you to seek

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1 an arrest warrant for aggravated robbery?

2 A. We thought Mr. Mamou might be in the apartment  
3 there at 10800 Fondren, Apartment Number 1402, the  
4 Scott's apartment.

5 Q. And if he had been there and you didn't have a  
6 warrant, would you have been able to arrest him if you  
7 had found him?

8 A. Yes, sir.

9 Q. If you didn't have a warrant, would you be able  
10 to arrest him? Wouldn't that be a warrantless arrest if  
11 you didn't have a warrant? Did not have a warrant.

12 A. That's right.

13 Q. Okay. Is that why you got a warrant, so you  
14 would have a basis to arrest him if you found him?

15 A. Yes, sir.

16 Q. Okay. Now the warrant is for aggravated  
17 robbery?

18 A. Yes, sir.

19 Q. Is the warrant for murder?

20 A. No, sir.

21 Q. Is the warrant for capital murder?

22 A. No, sir.

23 Q. So, had you made up your mind who committed the  
24 offense of capital murder?

25 A. No, sir.

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1 A. Yes.

2 MR. MCCLELLAN: Pass the witness.

3 RE-CROSS-EXAMINATION

4 BY MR. HILL:

5 Q. I just want to clarify one thing so that we're  
6 real clear here. You said when you went to 10800  
7 Fondren, Number 1402, I think Mr. McClellan was asking  
8 you, would you have been able to arrest him without a  
9 warrant? Is it your opinion, or is it your testimony  
10 that you would not have had the legal authority under  
11 Section 14.04, Code of Criminal Procedure, to arrest  
12 him?

13 A. It's better to have the warrant than without  
14 it.

15 Q. But you're familiar with that section of the  
16 Code that says, "Where it is shown by satisfactory proof  
17 to a peace officer, upon the representation of a  
18 credible person, that a felony has been committed and  
19 that the offender is about to escape so that there is no  
20 time to procure a warrant. Such peace officer may,  
21 without warrant, pursue and arrest the accused. You're  
22 aware of that, aren't you?"

23 A. Yes, sir.

24 Q. And, in fact, I would think -- or is that  
25 something that comes up on a regular basis in homicide

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1 Q. Because that warrant is for aggravated robbery?

2 A. Yes, sir.

3 Q. Now if you arrest someone on a probable cause  
4 warrant, that means a case has not been filed? Is that  
5 what that means?

6 A. Yes, sir.

7 Q. That allows you then to place that person in a  
8 lineup, does it not?

9 A. Yes, sir.

10 Q. If you place that person in a lineup, then  
11 people can come and identify or not identify and either  
12 help make the case or clear a person?

13 A. Yes, sir.

14 (Off-the-record discussion.)

15 THE COURT: The question was whether or  
16 not you all had arrested the defendant in Lafayette,  
17 Louisiana, on December 10, 1998, on the December 8th,  
18 1998 warrant.

19 THE WITNESS: No, sir, we did not arrest  
20 him on that probable cause warrant.

21 Q. (BY MR. MCCLELLAN) On December 10, 1998, when  
22 you went to Lafayette, Louisiana, he was already under  
23 arrest and in custody?

24 A. That's correct.

25 Q. On other charges?

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1 cases, felony case, a concern that the person is about  
2 to escape?

3 A. On a regular basis. If we have the time, we  
4 get a warrant.

5 Q. And if you don't have the time, you don't get a  
6 warrant. As long as you give the legal warnings  
7 properly and you do everything according to the Code,  
8 then that's okay?

9 A. Yes, sir.

10 Q. All right.

11 MR. HILL: No further questions.

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## REDIRECT EXAMINATION

BY MR. MCCLELLAN:

Q. And instead of relying upon your decision there, you call the D.A.'s Office and ask them; and they said get a warrant, right?

A. That's correct.

MR. HILL: Nothing further.

THE COURT: You may stand down.

What says the State?

MR. MCCLELLAN: State closes.

THE COURT: Both sides close?

MR. HILL: Yes, Your Honor.

THE COURT: Ladies and gentlemen, please go back in the jury room.

(Off-the-record discussion.)

(Jury is brought in and seated.)

THE COURT: Please be seated.

Ladies and gentlemen, we're going to adjourn for the weekend. Both sides have rested and closed. The evidence is closed in this case. There will be no evidence, no more testimony in this case. All the previous admonitions are still in effect. Again, you're not to discuss this case among yourselves or with anyone until both sides have argued the case to you on Tuesday morning.

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you can't talk about it.

There may or may not be coverage before you come back here on Tuesday morning in the media. Again, if it's on television or the radio, turn it down, turn it off, change the station. If there is something in the paper about it, put it aside. Read about it after it's all over. Once the charge is read to you and both sides have argued the case and you're back deliberating the case, I don't have a whole lot of control about how long you're out deliberating. You might be out for ten minutes. You might be out for two days. So when you come in on Tuesday morning, please bring a change of clothing, medicine, if you need to bring it; but leave it in your vehicles. If it should become necessary late in the day or in the evening to sequester a jury in a case such as this, we will give you the opportunity to go to your vehicles and retrieve that and perhaps move your vehicles to a more secure place, depending on where you're parked on Tuesday. So if you have dogs that need to be walked Tuesday evening, you might have somebody available to do that kind of thing if you need to have it done.

Again, you may use your telephones up until the time you go back to deliberate the case. And at that time we take up all the cell phones, and you

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We're going to ask that you return at 9:30 a.m. on Tuesday morning. Not Monday, but Tuesday morning, same drill. Wear your badges. Come through here and go into this room. I'm not certain the case is going to be argued in this courtroom, but we want you to start off here in case we do. We may be moving to another courtroom because of some of the conflicts with some other things that are going to be going on this floor, but we'll take care of that by Monday afternoon here when you're not around.

I anticipate that each side is going to have approximately forty-five minutes or so to argue their case. After the reading of the charge, it will possibly be in excess of two -- a little more than two hours, as far as the course of reading the charge and arguing the case. We'll possibly take a break somewhere during the arguments.

Again, do not make any kind of independent investigation. Don't go by any scenes. Don't try to read up on any law you think might apply on the case. If people are trying to talk to you about the case, bring it to our attention immediately. If someone, friends and neighbors, relatives are trying to ask you questions, tell them you'll be happy to talk about it once this case is over. But while it's still pending,

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will not be able to use the phones unless we are on a break and there is some special need to do so at that point.

Any requested admonitions or instructions from the State or defense?

MS. CONNORS: No, Your Honor.

MR. WENTZ: Nothing, Your Honor.

THE COURT: Anybody got any questions? If you would, you're going to go down in one elevator. We'll see you in our jury room at 9:30 Tuesday morning. (Court adjourned at 6:50 p.m.)

1 THE STATE OF TEXAS )

2 COUNTY OF HARRIS )

3 I, Pamela Kay Knobloch, Official/Deputy  
4 Official Court Reporter in and for the 179th District  
5 Court of Harris County, State of Texas, do hereby certify  
6 that the above and foregoing contains a true and correct  
7 transcription of all portions of evidence and other  
8 proceedings requested in writing by counsel for the  
9 parties to be included in this volume of the Reporter's  
10 Record, in the above-styled and numbered cause, all of  
11 which occurred in open court or in chambers and were  
12 reported by me.

13 I further certify that this Reporter's Record  
14 of the proceedings truly and correctly reflects the  
15 exhibits, if any, admitted by the respective parties.

16 I further certify that the total cost for the  
17 preparation of this Reporter's Record is \$\_\_\_\_\_ and  
18 was paid by Harris County.

19 WITNESS MY OFFICIAL HAND this the \_\_\_\_ day of  
20 \_\_\_\_\_, 2000.

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Pamela Kay Knobloch, Texas CSR No. 1650  
Expiration date: 12/31/2000  
Official Court Reporter, 179th District Court  
Harris County, Texas  
301 San Jacinto  
Houston, Texas 77002  
713.755.6340

APPELLANT: CHARLES MAMOU, JR.  
CAUSE NO. 800112



<p><b>\$</b></p> <p><b>\$17,000</b> [1] 219:25</p> <p><b>\$17,500</b> [1] 219:24</p> <p><b>\$9,000</b> [2] 163:10 164:14</p> <p><b>\$</b> [1] 279:11</p>	<p>264:8 268:3 270:23 272:17</p> <p>272:18 272:21</p> <p><b>1999</b> [5] 1:18 241:9 241:9</p> <p>242:1 249:12</p> <p><b>19th</b> [1] 241:9</p> <p><b>1:00</b> [4] 27:11 27:11 27:13</p> <p>255:21</p> <p><b>1st</b> [5] 21:22 21:25 22:1</p> <p>22:3 22:6</p>	<p><b>6:30</b> [1] 158:15</p> <p><b>6:39</b> [1] 24:10</p> <p><b>6:50</b> [1] 278:11</p> <p><b>6th</b> [22] 165:6 165:10 165:25 166:1 167:9 168:17 179:7</p> <p>212:1 215:16 218:21 219:3</p> <p>219:4 221:4 221:6 221:10</p> <p>230:24 245:10 251:6 253:8</p> <p>254:21 255:14 268:2</p>	<p>[1] 279:12</p> <p>[1] 279:15</p> <p><b>A</b></p>
<p><b>'96</b> [1] 44:15</p> <p><b>'97</b> [2] 44:15 44:16</p> <p><b>'98</b> [1] 36:7</p>	<p><b>2</b></p>	<p><b>7</b></p>	<p><b>A.m.</b> [3] 139:8 139:8 276:2</p>
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## REPORTER'S RECORD

VOLUME 21 OF 25 VOLUMES

TRIAL COURT CAUSE NO. 800112

CHARLES MAMOU, JR. ) IN THE DISTRICT COURT

Appellant )

)

VS. ) HARRIS COUNTY, TEXAS

)

THE STATE OF TEXAS )

Appellee ) 179TH JUDICIAL DISTRICT

\*\*\*\*\*

## ARGUMENTS OF COUNSEL

\*\*\*\*\*

On the 12th day of October, 1999, the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable Michael T. McSpadden, Judge Presiding, held in Houston, Harris County, Texas:

Proceedings reported by computer aided transcription/stenograph machine.



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3

1 THE COURT: Outside the presence of the  
2 jury, has the State received its copy of the proposed  
3 charge?

4 MR. MCCLELLAN: Yes, Your Honor.

5 THE COURT: Any objection, Mr. McClellan?

6 MR. MCCLELLAN: No, Your Honor.

7 THE COURT: Wayne, has the defense  
8 received its copy of the charge?

9 MR. HILL: Yes, Your Honor.

10 THE COURT: Would you please state your  
11 objections?

12 MR. HILL: Judge, we would object to the  
13 Court's failure to include the lesser included offense  
14 of false imprisonment in the jury charge. We're  
15 requesting that charge be submitted to the jury for its  
16 consideration.

17 THE COURT: That will be denied.

18 MR. HILL: We're also objecting to the  
19 fact the Court is instructing the jury that Samuel  
20 Johnson, also known as Bug, is an accomplice, or  
21 possibly an accomplice as a matter of fact. We believe  
22 that the evidence has shown that individual is an  
23 accomplice as a matter of law. And we ask that the jury  
24 be so instructed on accomplice as a matter of law, not  
25 as a matter of fact.

4

1 THE COURT: That will be denied, in  
2 accordance with Judge Wilkinson's rulings last Friday.

3 MR. HILL: Last one is that we ask the  
4 Court include an accomplice as a matter of fact. We ask  
5 the Court include accomplice instructions regarding an  
6 individual by the name of Kevin Walter and Dion Holley.

7 THE COURT: Okay. And that will be  
8 denied, in accordance with Judge Wilkinson's rulings  
9 last Friday. Is it agreed between the State and the and  
10 defense that because of Judge Wilkinson's emergency  
11 because of family matters, that I, Judge McSpadden will  
12 read the charge to the jury, dismiss the 13th juror  
13 after the arguments are heard, who is one, Mr. William  
14 Kelly; is that correct?

15 MR. MCCLELLAN: That is correct, Your  
16 Honor.

17 MR. HILL: That's correct, Judge.

18 THE COURT: And then if it's agreeable  
19 with the State and agreeable with the defense?

20 MR. HILL: Yes.

21 THE COURT: Okay, good. Bring out the  
22 jury, please.

23 Forty-five minutes to a side.

24 MR. MCCLELLAN: Thank you, Your Honor.

25 (Jury is brought in and seated.)

5

1 THE COURT: Please have a seat. Good  
2 morning, members of the jury. My name is Mike  
3 McSpadden. I'm Judge of the 209th District Court,  
4 Criminal Court, a fellow Judge of Judge Wilkinson.  
5 There was an emergency in Judge Wilkinson's family this  
6 morning, and he could not be present here this morning.  
7 Rather than inconvenience you, both sides have agreed  
8 that I will go ahead and read the charge to you, hear  
9 argument of counsel, and then you go back and  
10 deliberate. Judge Wilkinson should be back here early  
11 sometime this afternoon to preside over the following  
12 aspects of the case.

13 First of all, both sides have rested.

14 Both sides have closed. That's all the testimony you'll  
15 hear. The Court's going to read you the charge, the law  
16 in the case, and both sides will have approximately  
17 forty-five minutes each to argue their case with you.

18 First of all, the law.

19 (Court reads charge.)

20 THE COURT: Both sides will have  
21 approximately forty-five minutes to argue their case.

22 Mr. McClellan, you may proceed, sir.

23 MR. MCCLELLAN: Thank you, Your Honor.  
24  
25

6

# ARGUMENT OF THE STATE

1 BY MR. MCCLELLAN:

2 May it please the Court? Ladies and  
3 gentlemen of the jury, I want to speak to you for a  
4 while about the charge and talk to you about what the  
5 Judge has read to you. As we told you on voir dire,  
6 you'll get this charge, the document the Judge read, be  
7 able to take it back with you, refer to it throughout  
8 your deliberations.

9 We talked to you in voir dire that you're  
10 the sole judge of the facts of the case. You heard  
11 those facts from the witness stand, and you'll decide  
12 what the facts are, apply the law the Court has given  
13 you to those facts, and arrive at your decision. After  
14 I talk to you briefly about the charge, then I'm going  
15 to sit down. And the defense will have an opportunity  
16 to give their summation, and I'll have the opportunity  
17 to respond to what they have to say.

18 First of all, I want to talk to you about  
19 the fact that, as charged in the indictment there on  
20 page -- when you get to the charge, you get over to Page  
21 5, what I call the charging paragraph. And it says, Now  
22 if you find from the evidence beyond a reasonable doubt  
23 that on December the 7th, 1998, in Harris County, Texas,  
24 that the defendant, Charles Mamou, Jr., intentionally  
25

7

1 took the life of Mary Carmouche while in the course of  
2 committing or attempting to commit kidnapping of Mary  
3 Carmouche, you will find the defendant guilty of capital  
4 murder.

5 And that's where we're at. You'll notice  
6 that in the charge, though, the Judge read to you some  
7 other options. Capital murder. The next option was  
8 murder. And the next option was aggravated kidnapping.  
9 Then the next option was kidnapping. And they're called  
10 lesser included offenses; and they're called lesser  
11 included offenses because within this concept of capital  
12 murder, all those offenses are there. And you don't  
13 ever get to a lesser included offense unless each and  
14 every juror has a reasonable doubt that it is not  
15 capital murder. That's the first thing.

16 You even go back to the verdict page. The  
17 first thing it says, We, the jury, find the defendant  
18 guilty of capital murder, as charged in the indictment.  
19 If not that, then we find him guilty of murder. If not  
20 that, aggravated kidnapping. If not that, kidnapping.  
21 If not that, not guilty. So it's there, that option,  
22 for a reason. Because within that type of a murder is  
23 kidnapping. Within capital murder is aggravated  
24 kidnapping. And within capital murder is murder. And  
25 if you have murder during the course of a kidnapping,

8

1 you have capital murder. So you never get to a lesser  
2 unless every person has a doubt, reasonable doubt that  
3 the State failed to prove capital murder.

4 It talks about -- and it gives you the  
5 definition of kidnapping. Now the common perception may  
6 be that kidnapping occurs at a certain point, and then  
7 that's the point you have to look at. I suggest to you  
8 that's wrong. If I kidnap someone, abduct them, it  
9 means by secreting or holding in a place where not  
10 likely to be found, or by using or threatening to use  
11 deadly force. If I put a gun on somebody and take  
12 somebody, that's kidnapping, if I move them from one  
13 place to another. And as long as I have them in my  
14 control, it is continually kidnapping.

15 It's kind of like theft. If I go up and  
16 steal some item from a store, that's theft. If I leave  
17 the store, it's still theft. If I got home with it,  
18 it's still theft. A week later, it's still theft.  
19 Theft doesn't end or start -- it may start there, but it  
20 doesn't end with the taking. Kidnapping doesn't --  
21 isn't just the point that you take someone. Obviously,  
22 in the evidence you've heard in this situation, Mary  
23 Carmouche is in the car, the defendant, after shooting  
24 three people, gets in the car and abducts her, sure,  
25 that is a point of kidnapping; but that kidnapping

9

1 continues forever in this case, because she's never  
2 released, never found alive again. So the kidnapping is  
3 a continuing process.

4 That's important for this reason: In the  
5 fourth page of the charge it talks about justification.  
6 And you may recall Mr. Hill, during the general voir  
7 dire that we had after all forty-five or forty-two of  
8 you were there, and I didn't talk to you but Mr. Hill  
9 talked to you for a while. He talked about a situation  
10 where somebody might jump in a car to chase a murderer  
11 and find out later there is a baby in the backseat. And  
12 is that a kidnapping when it was a necessity, if you  
13 will, to get in this car and chase the murderers?

14 Well, what's important about that is if  
15 someone were to believe that Charles Mamou, out of  
16 necessity or fear that somebody was going to shoot him,  
17 after he had already shot the only three people there  
18 who were males and jumped in the car and took off,  
19 that -- well, that was a necessity for him to do;  
20 because if you believe Bug Johnson left first, there was  
21 no other way of doing it other than to walk away. But  
22 that's not the necessity, if you look at the careful  
23 reading of that. That's not justification. Plus, it  
24 would continue on if it were. For some reason, you  
25 would decide he was justified in jumping in the car and

10

1 leaving the scene in that car, but why didn't he stop  
2 and let her out someplace else? Why didn't he let her  
3 go? And you know the reason. Because he had to kill  
4 the only witness who was left alive. He had to kill the  
5 only person that he had not. He already killed the  
6 other three.

7 Four people in that car. Two people end  
8 up dead. Two people end up shot. He took her alive  
9 from that scene, took her to another location and killed  
10 her. And thus, you'd find the necessity. Again, it  
11 would have to be a continuing situation when you look at  
12 necessity. Not the necessity of taking the car at that  
13 moment, which I think -- what I think is irrelevant --  
14 which I believe the evidence shows would be ludicrous to  
15 say that it was a necessity on his part, that he was  
16 justified on his part in taking that car. But even if  
17 you believe that, he was not justified in not letting  
18 Mary Carmouche -- letting her go at a later time. And  
19 the only reason he didn't is because he had to make sure  
20 there were no witnesses.

21 So that's why it's important to realize  
22 that kidnapping is an ongoing process. This idea of  
23 justification in your actions is an ongoing process. If  
24 you're justified at point one, doesn't mean you're  
25 justified at point ten. So it's an ongoing process.



11

1 Again, you go through that after the charge. It's going  
2 to have different things. Going to start out with  
3 capital murder. If you believe from the evidence beyond  
4 a reasonable doubt that during the course of kidnapping  
5 he killed Mary Carmouche, he's guilty of capital murder.  
6 That's the end of the inquiry. And the reason it's put  
7 in that order is because that's what he's charged with.  
8 And it would be easy to say, sure, he's guilty of  
9 kidnapping. It would be easy to say, sure, he's guilty  
10 of aggravated kidnapping. It would be easy to say,  
11 sure, he's guilty of murder. And I suggest to you it  
12 would be easy to say he's guilty of capital murder. But  
13 it's in that order for a reason, because he's charged  
14 with the most serious crime. Unless every person has a  
15 reasonable doubt that he's guilty of capital murder, you  
16 never even get to discuss these other lesser included  
17 offenses.

18

On Page 8 there is the defense of alibi.

19

You heard from the defendant. And you be the judge of  
20 his credibility, saying he wasn't even there. He  
21 doesn't know what happened to Mary Carmouche. As best I  
22 can tell, people like Bug Johnson, or Shawn England, or  
23 Ken, the bicycle guy, must have killed her; because  
24 according to the defendant and his testimony, he didn't  
25 have anything to do with it.

12

1 On Page 9 and 10, there is an accomplice  
2 witness testimony charge. And we talked to you -- the  
3 Judge talked to you on voir dire about accomplice  
4 witnesses. And the things that are important about that  
5 is, first of all, let it be your decision as to whether  
6 or not Samuel Bug Johnson was, in fact, an accomplice to  
7 the offense of capital murder. He may have been an  
8 accomplice to a drug deal. He may have been an  
9 accomplice to a drug transaction that he thought was  
10 going to be taking place. But I suggest to you, the  
11 evidence is clear that he's not an accomplice as to  
12 capital murder.

13

But let's say you decide that he is, okay.

14

Let's say you decide he is an accomplice to capital  
15 murder, that he aided, assisted, and helped the  
16 defendant, Charles Mamou, in the commission of capital  
17 murder. Then what that instruction says is that you  
18 couldn't convict Charles Mamou just on the evidence of  
19 Samuel Bug Johnson. There had to be other evidence that  
20 tends to connect the defendant to the crime, and there  
21 is tons of other evidence.

22

I mean, Bug Johnson -- Samuel Bug Johnson  
23 is not a witness to the shooting and killing of Mary  
24 Carmouche. So his testimony, obviously, would never get  
25 you to that ultimate point. But there is all kinds of

13

1 other evidence, the ballistics evidence, fingerprint  
2 evidence, the location of the car, all kinds of  
3 evidence, plus the admission the defendant made to his  
4 own cousin, Terrence Dodson. I'm sure they're going to  
5 come in and say, well, the defendant said Terrence was  
6 afraid they were going to have to file charges on him,  
7 and that's why he said what he said.

8

Well, you don't come in and make up a  
9 story that someone is guilty of capital murder just  
10 because you're afraid someone is going to file a charge  
11 on you. And the person who you're related to, you don't  
12 make up a story and take the stand under oath and  
13 testify to a lie that he committed the offense of  
14 capital murder when you know, or don't have any reason  
15 to believe that he did.

16

So you know the evidence that you heard  
17 from Terrence Dodson -- and Terrence Dodson didn't  
18 try -- didn't try to sugarcoat what his involvement was.  
19 Well, I had a gun. I had a .25 stuck in here. I was  
20 ready to go. We were ready to take that money over on  
21 Cavalcade over there at Papa's. And then he's  
22 disassociated from the situation. He had no reason to  
23 come in here and lie to you. He told you all the good,  
24 the bad, and the ugly. And I suggest to you after  
25 looking at all the evidence that you've heard in this

14

1 case -- and there was a lot of evidence about a lot of  
2 things; and we had to go back and talk to you about how  
3 things started. You were probably wondering for days,  
4 were we ever going to get to the point of the kidnapping  
5 of Mary Carmouche and the killing of Mary Carmouche?  
6 But it's all part of a continuing process. It's all the  
7 part of the same transaction. So something that  
8 started -- and you have to know how it started, how it  
9 got there to its ultimate tragic end. And you've heard  
10 all that evidence, and we brought you all the evidence  
11 we could bring you that have any type of information  
12 about this case.

13

Sure, we could have brought you a whole  
14 bunch of other people that could have said, I know  
15 nothing about the case. But I'm not going to waste your  
16 time doing that. And, of course, the defense has the  
17 same subpoena power we do. So if there is something,  
18 other people they say we didn't bring, they could have  
19 brought them, too. Talking about Shawn England. What  
20 did he know about the case? They had as much right to  
21 bring him as a witness as we did. Our position is if he  
22 didn't have relevant information, then there is no  
23 reason for us to bring him.

24

You've heard the evidence, received the  
25 charge. After defense counsel has his argument, I'll

15

1 have an opportunity to respond to what he has to said.  
2 And I look forward to addressing you at that time.

3 THE COURT: Thank you, Mr. McClellan.

4 Mr. Wentz, you may proceed.

5 MR. WENTZ: May I have one second, Your  
6 Honor?

7 THE COURT: Yes, sir.

8 ARGUMENT OF THE DEFENSE

9 BY MR. WENTZ:

10 Judge McSpadden, Mr. McClellan, Miss  
11 Connors, and you, ladies and gentlemen of the jury:  
12 First of all, thank you very, very much for the very  
13 close attention that you have given to this case during  
14 the presentation for the State and the defense. I know  
15 that you will continue to give it the same close  
16 attention as you conduct your deliberations. You have  
17 as much time as you want. Do not feel rushed. If  
18 things are unclear to you, ask for the testimony to be  
19 read back, as you've been told you can.

20 My comments to you are going to be  
21 somewhat brief this morning. I would like to talk to  
22 you about some of these concepts of law that have been  
23 given to you, and I'd also like to talk to you about  
24 some of the facts you've heard. You now know from the  
25 charge some things you had heard of before, and you know

16

1 from the charge that Charles is presumed to be innocent.  
2 You know that any decision you must render must be  
3 unanimous. And you know that this State's burden of  
4 proof is beyond a reasonable doubt. And as I read, the  
5 prosecution has the burden of proving the defendant  
6 guilty and must do so by proving each and every element  
7 of the offense charged beyond a reasonable doubt. And  
8 if it fails to do so, you must acquit the defendant.  
9 And that is not bad.

10 You are further charged that the State is  
11 required -- or it is required that the prosecution's  
12 proof exclude all reasonable doubt concerning the  
13 defendant's guilt. And you are charged that proof  
14 beyond a reasonable doubt, therefore, must be proof of  
15 such a convincing character that you would be willing to  
16 rely and act upon it without hesitation in the most  
17 important of your own affairs. Without hesitation in  
18 the most important of your own affairs.

19 You have been told of other charges that  
20 are contained within this jury charge. There is not  
21 just capital murder. You've known from the very outset  
22 what the State's theory of this case is. But you are  
23 told, also, now that that evidence may fit other crimes,  
24 such as murder, such as aggravated kidnapping, such as  
25 kidnapping. And it is now for you, yourself, each and

17

1 every one of you, to decide for yourselves what that  
2 crime may be. And where does the State's proof demand  
3 it to be?

4 You are further instructed on the defense  
5 called necessity. And as you read that defense on Page  
6 4, it tells you that you must consider the circumstances  
7 upon which it is acted upon from the circumstances of  
8 the defendant. Not as you sit here today, but as things  
9 were back on December 6th and that evening. A very  
10 simple truth is that appearances can be deceiving, and  
11 things are not what they appear. And I submit that that  
12 is particularly true in this case.

13 That man is not some big drug dealer. I  
14 would submit -- I don't mean to offend you -- that's  
15 bullshit. He comes from some small podunk town in  
16 Louisiana, where he may be a drug dealer; but he's not  
17 somebody who deals in keys and half keys. He may be a  
18 big fish in a little pond in Sunset. But when it comes  
19 to Houston, he is a guppy; because he was totally out of  
20 his league from the minute he arrived here, and everyone  
21 from Houston was running him all around. He may be a  
22 leader in Sunset; but in Houston, Texas, doing what  
23 you've heard, he's nothing more than a little leg man.  
24 He's not some big drug dealer.

25 He says, Timmy Thomas is my employee. The

18

1 State's witnesses say, Whose idea is all of this?  
2 Timmy Thomas. Not the employee. Who's here? Shawn  
3 England. He's bringing this altogether. He's helping  
4 bringing it altogether between the Sunset people and the  
5 people he knows here in Houston; Dodson, Johnson, the  
6 others. He doesn't deal in kilos. He deals in ounces.

7 And they finally get to that store on the  
8 second stop. They are no longer talking about kilos.  
9 They're talking about the little ounce deals that he had  
10 done with Kevin Walter before. And the money comes way  
11 down. He's not in control of all of this. He doesn't  
12 dictate what's happening. The first two places they  
13 went on the 6th, Dodson and Walter decided. And even  
14 then, when they finally do get to Lantern Point, they  
15 may or may not have chose that location; but who's  
16 controlling what happened? Those three, Gibson,  
17 Dodson, and Walter, they have their protection man,  
18 Gibson.

19 Terrence Dodson decides sometime early,  
20 earlier in the evening, he wasn't going to have any part  
21 of it. It wasn't going to happen, so he walked. He's  
22 not controlling what happened. He's reacting to what  
23 happened. It's he and Bug. And I think we all know  
24 that Bug is worthless and a liar. And what happened?  
25 All hell does break loose out there. Three people get

19  
1 shot, and one of them horribly dies. Because it  
2 shouldn't have happened, but it did happen. And you  
3 know that there was a gun out there, a gun taken there  
4 by other people. And you know that when Charles told  
5 you about raising up, that there was a gun there. And  
6 what happens? He doesn't leave. Three people are  
7 shot. Bug has driven away. And this says, And he gets  
8 in that Lexus and he drives. And that is the only time  
9 that all of what you have heard of anytime he's been in  
10 Houston that he is really driving by himself. Because  
11 all of the other events, you've heard somebody is always  
12 driving him, except when he walked to a Burger King.

13 And who is it that's guiding him there?  
14 It's Bug Johnson. And where is he taking him? Back to  
15 the apartment where they came. And this is where it  
16 begins to make sense, because what do we know from  
17 Howard? It was Bug who picked Charles up from Howard's  
18 house. So he knows where to guide him back, and that's  
19 where he guides him back to. Remember, all this time  
20 whenever he's moving about, there is always somebody  
21 from Houston with him. Now in that car there wasn't,  
22 but he's following Bug. Bug comes up behind him. He  
23 takes him back to Howard's. And that makes sense, as I  
24 said; because Howard tells us that Bug did pick Charles  
25 up there. And it also goes to illustrate what an

20  
1 absolute utter liar Bug is.  
2 Because what does Bug tell us? This man,  
3 who doesn't know where I live, suddenly turns up on my  
4 doorstep. And I believe him, and I go do a drug deal  
5 with him. And I'm a good family man. It doesn't wash,  
6 ladies and gentlemen, in no way, shape, or form. Who is  
7 there when he gets back? Something Howard tells you,  
8 the State's witness that they're putting all this  
9 credibility with, England there. Skin's there. They  
10 leave. They come back. They're all there. Why were  
11 they there? They're waiting for Charles. The leg man  
12 has returned, guided by Bug. What are they waiting for?  
13 Shows they're waiting for Charles to bring home the  
14 bacon, the dope in this case. It's not there. The sad  
15 thing is, somebody else is there. Mary.

16 Now these people in Houston have a  
17 problem, because the leg man has got a young lady, too.  
18 And she now knows them. She knows where they live.  
19 She's seen it. And as you know, they all have cars.  
20 That's one of the things that Charles is dependent upon  
21 them for. And we know that that car, that Lexus, is not  
22 the car used at this point; because it has a flat tire,  
23 because it's been in a shoot-out. The police would be  
24 looking for it. So that car can't be used.

25 Now who else could move Mary from that

21  
1 scene? Bug? Shawn? I don't know. They all have  
2 cars. They all got there, and that's what happened.  
3 She was taken away. Not by the defendant. Where is she  
4 taken? We don't know. But we do know that that young  
5 lady tragically died, and we know where she was  
6 tragically found, but we do not know where she was  
7 killed. When they see her, they know this is Houston.  
8 This is Southwest Houston, their part of town. Charles  
9 is from Louisiana. He'll go home. And he did. That's  
10 where he went.

11 Look at the bullets that were found there.  
12 This is the bullet that was found where Mary was found,  
13 aluminum. It's not a hollow point. The autopsies will  
14 tell you that. What happened at the scene, Lantern  
15 Point? We have copper hollow points, two different  
16 types of bullets being used. He had a 9 millimeter.  
17 It's a very common caliber. We all know that. But look  
18 at the difference between them. You can see the  
19 difference even if you don't know guns like Baldwin.  
20 And even Baldwin cannot tell us that the bullets that  
21 were found in Mary and in Terrence came from the same  
22 gun. There is no match. And he was honest enough to  
23 say he can't say it's from the same gun.

24 This is not a popularity contest. You've  
25 heard a lot of things you don't like. You've heard

22  
1 things you don't want to be a part of. And you've heard  
2 things that are not part of your life, will never be  
3 part of your life, except that you decide this case.  
4 But that's not the reason to find this man guilty.  
5 Charles did not kill Mary Carmouche. You have no  
6 evidence of it. He did not kidnap her. He didn't  
7 intend to abduct her.

8 You have that defense of necessity. And  
9 when I say you, I do mean you, and everyone else. It's  
10 just in this case, it's Charles who has the use of it,  
11 just like some other people will have the use of it.  
12 Every State's witness, except for Bug, who is so  
13 self-serving in what he says -- said that Johnson left  
14 the scene first. And it's only the self-serving Johnson  
15 who would say otherwise.

16 Do not ever speculate in your decision  
17 today, because that's what this circumstantial evidence  
18 can lend itself to. At the same token, I ask one other  
19 thing. Don't allow your own care for Mary Carmouche to  
20 be substituted for the lack of care, the lack of concern  
21 that was shown for that young girl by Kevin Walter, by  
22 Dion Holley, by Terrence Gibson, by Bug Johnson, for  
23 they carried her to their deals throughout that evening,  
24 away to Lantern Point.

25 This is a father's worst nightmare. He's



23

1 there. He sees her. He sees that picture of her when  
2 she was in the R.O.T.C.; and he knows that she's hanging  
3 out with the wrong guys, the guys that drive this Lexus.  
4 And he's there that night; and he's getting ready for  
5 Monday, to go work at his own company. Mary and her  
6 mother -- the last thing in the world he wants is for  
7 Mary to be going out with these people. And he goes to  
8 bed. Young people do what they want in many cases, and  
9 she did, too. And she went with her fast-living  
10 friends.

11 I know you care more about her than any of  
12 these people that you've heard from, except for Mary's  
13 father. He's flawed. He has his faults. You possibly  
14 don't even like him. But Charles did not kidnap Mary,  
15 and he did not kill Mary, and he is not guilty of  
16 capital murder. In fact, he is not guilty. Thank you.

17 THE COURT: Thank you, Mr. Wentz.

18 Mr. Hill, you may proceed. You have  
19 thirty minutes left.

20 MR. HILL: Thank you.

21 ARGUMENT OF THE DEFENSE

22 BY MR. HILL:

23 Ladies and gentlemen of the jury, we have  
24 an opportunity to open the argument to you, but the  
25 State has the right to close the argument to you. And I

24

1 can well-imagine a plea coming to you this afternoon  
2 when Mr. McClellan stands up and speaks with you. And  
3 it's not the tone of his voice. It's not how loud he  
4 can speak. You must look to the quality of the evidence  
5 that you have to rely upon to make a decision in this  
6 case. And if you follow the law and you look carefully  
7 at that evidence, it will lead you to one inescapable  
8 conclusion. And that is that you must find Charles  
9 Mamou, Jr., not guilty.

10 You know, we talked at great length during  
11 the voir dire process when we met individually with each  
12 one of you before you were selected to serve on this  
13 case, and we talked a great deal about two ways of  
14 committing or allegedly committing capital murder. And  
15 then on the day of trial all of a sudden you find out  
16 for the first time that you're not going to be called  
17 upon to make a decision with regard to the first way,  
18 which is that the defendant had been charged with  
19 killing two people during the same criminal transaction.

20 From this point forward, when Judge  
21 Wilkinson told you that you would only be listening to  
22 one case, we don't have to concern ourselves with that.  
23 And perhaps now, as you sit there and you listen through  
24 one week of testimony, you can understand why you're not  
25 being called upon to make that decision. Because I

25

1 think it's quite clear that despite what the State will  
2 say about not having any necessity, not having to rely  
3 upon any of these defenses, if you, and each one of you,  
4 placed yourself in the position that Charles Mamou, Jr.  
5 found himself on the evening of December 6th, 1998, you  
6 have to wonder, what would I do?

7 Well, the hardest thing for you to think  
8 about is ever being in that situation. And you know,  
9 that's the sad part; because you, as law-abiding  
10 citizens, can never imagine yourselves being on Lantern  
11 Point near midnight of December 6th. But that's what  
12 the law requires you to do. Put yourself in the shoes  
13 of Mr. Mamou. Review it from the circumstance he was  
14 having to deal with at that very point in time. We  
15 can't Monday morning quarterback. We can't look back  
16 and say, oh, well, I would not have done that in the  
17 first place. Well, of course not. But that's not what  
18 the law requires you to do.

19 Please look at that charge very carefully.  
20 I want to respond just briefly to some of the opening  
21 comments made by Mr. McClellan. And he stresses to you  
22 that you have to agree, all twelve of you, that the  
23 defendant is not guilty of capital murder before you can  
24 even consider these lesser included. Well, let me  
25 submit to you that's ultimately your decision. No

26

1 matter what argument he or I make to you, you're guided  
2 by the Court's charge and you have to follow that  
3 charge.

4 But what's interesting, it doesn't tell  
5 you how you might ultimately arrive at that conclusion.  
6 Because as you're looking at the charge, there could be  
7 some people, based on this charge, that feel like the  
8 defendant did act out of necessity when he took the  
9 vehicle with Mary inside of it.

10 There might be other people that say, I  
11 don't believe he has -- the State has proven that he  
12 actually caused the death of this individual. Others  
13 might say something in between. Maybe he was guilty of  
14 aggravated kidnapping, but not the murder. So there  
15 could be reasonable doubt on several different elements  
16 that the State must be required to prove beyond a  
17 reasonable doubt. That ultimately is your decision to  
18 make.

19 And if you read the charge, as you're  
20 required to do, and follow it very carefully -- and we  
21 spent a lot of time on voir dire about this -- it's the  
22 State's responsibility to prove each and every element  
23 of the offense beyond a reasonable doubt. And if they  
24 fail to do so, your responsibility is to acquit. And  
25 remember how we discussed with you -- and some of you, I

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specifically asked you if you had a feeling that an individual was involved somehow with wrongdoing, but you felt that the State had not proven beyond a reasonable doubt by competent evidence that the defendant committed the offense alleged, would you be able to find him not guilty? Each and every one of you said you would. And recall when I did stand up in front of you as a panel, and I visited with you before trial began about how we asked you to make those commitments individually and then as a group. This is what we rely upon, because you are going to be the people making the call in this case.

Now Mr. McClellan invites me, he says, perhaps Mr. Hill will enlighten us as to who committed this. Ladies and gentlemen, I wasn't out there on December 6th and December 7th, and neither was Mr. Mamou. And it's not my burden to prove his innocence. And I think it's a little bit disingenuous of -- not Mr. McClellan, but the State in general, as evidenced by the police officers that were involved in this case to suggest to you when they get up and they testify.

And Mr. McClellan -- you'll recall this specifically with Detective Novak. Who was the suspect that was developed? Who was the suspect? And you know, he's kind of closing in, wanting to be the last

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couple of comments to Detective Novak that it's Charles Mamou. And then what happened? And then we filed charges against him. Then after a few questions from me, let's talk about who else were suspects in this case. All of a sudden he rattled off some names. Those names are real familiar to us now that the evidence is in.

And the State wants to chastise me and invite me to subpoena somebody by the name of Shawn England here? I don't think so. I think that's their responsibility, their burden of proof. How come the police officers haven't been able to come here and tell you more about him? How come they didn't tell you what they did or didn't do with regard to Shawn England? How come it is that in real life when a person is suspected of a crime and they're under police scrutiny and under the hot lights, if you will, they're not supposed to figure out they need to give up some information that will help the State and get the monkey off their back?

Because that's what each one of the State's witnesses was put in the position of. Now come on, ladies and gentlemen, you don't lose your common sense when you go back in the jury room. And I think for somebody to suggest that you don't have a reason why the likes of Terrence Dodson and the likes of Anthony

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Trail and Bug Johnson -- and they don't understand the game real well and recognize that, you know what? This isn't going real good for me. But coincidentally, magically, it's the power of the State to decide who gets charged and who doesn't get charged. We don't have any charges of any type regarding any offense that all these other people were committing. Isn't that real strange? We don't want any of that taint to fall on them.

Maybe they get up on the witness stand, take that witness stand, and tell you a story and not have to worry about it being used against them; because the decision has already been made, they're not getting charged with anything at all. And the evidence is clear and it's abundant that everybody was committing a criminal act out there. So they want to try and shift the focus away from all of their witnesses and only shine the spotlight on Charles Mamou. And the common argument is, oh, he's trying to deny responsibility. Why can't he stand up and take responsibility for what he did? Well, he did. Oddly enough, he comes up in front you and he says exactly what had happened.

Why is he acknowledging to you, Mr. Mamou, when he gets up on the witness stand, part of what Anthony Trail and Terrence Dodson told you about the

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keys? Why would he say that if it wasn't true? Wouldn't it be more logical, wouldn't it make far more sense to you, if you're going to say you never had the conversation, period, with them, you'd also say, I never had the keys? I never showed them a set of keys? But it makes sense, because Howard Scott, who lived at 10800 Fondren, where the car is found, tells him to move the vehicle. You know, he's putting himself in the position of saying, well, that was a true statement. That's a false statement. He could have just denied all of it. He didn't. He came to you and told you what exactly had taken place.

Now, State says it's an ongoing process. Sure enough, okay. Person is taken. And the critical inquiry for you to be making in this situation -- we can use this word abduct, and the connotation of the word abduct means that you're taken illegally from one place and moved to another. And certainly, that's what the law requires you to find if you're even going to be considering finding Mr. Mamou guilty of any offense in this charge.

But think about how the laws work. The law recognizes that a person can be involved in committing a crime, which clearly they were on Lantern Point. But the law also envisions that things can

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1 change, and they can change very rapidly. And I think  
2 you can understand just how quickly this whole situation  
3 took place. And at that very point in time when  
4 Mr. Mamou is firing at those individuals, do you think  
5 for one minute -- again, as you place yourself in his  
6 shoes that night, do you think for one minute that  
7 anybody can be certain that the perilous situation they  
8 were in is over? You know, that is a dark street, by  
9 everybody's account, desolate, nobody out there, fields  
10 on either side. You have to place yourself in that  
11 situation to understand it.

12 We're not talking about the courtroom here  
13 with the light shining down on us. We're talking about  
14 a dark, desolate road in Southwest Houston. And  
15 coincidentally, Mr. Wentz alluded to you during his  
16 opening statement how Charles is being led around, how  
17 he's being taken everywhere. Think about this for a  
18 minute. State's witnesses. Terrence Gibson is in one  
19 car along with Kevin, Dion, or that -- and you consider  
20 what Bug said. They all have a situation where they're  
21 claiming that they're wanting to back out of all these  
22 transactions both at the Northline Mall, at Cavalcade,  
23 then over at Bennigan's, then over at the office complex  
24 near Bennigan's.

25 And coincidentally, the Fiesta Store,

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1 physical evidence to corroborate what he tells you about  
2 where he takes her. He takes her to 10800 Fondren in  
3 the parking lot. Now all of a sudden, there is a real  
4 significant aspect to that. Because you know that glass  
5 that's on the ground? And you know the little  
6 photograph there that's underneath the rock the police  
7 put there? Remember when I asked him about where that  
8 was in conjunction with the vehicle that was back under  
9 the carport? Why do you think that's significant?  
10 Well, the significance of that is because that's exactly  
11 where the car was taken, as Mr. Mamou told you. And  
12 when he gets out of the car, Howard Scott and the  
13 others, after they put their socks on, they go rummaging  
14 through that car to try and find dope.

15 And just as Mr. Wentz told you, why is it  
16 that all those guys are there? Coincidence? No.  
17 They're waiting for the payload to arrive, and they're  
18 frantically looking through that car. That's why you  
19 have some glass on the ground. And then at some point,  
20 once they realize there is nothing to be found there,  
21 that's when Howard Scott has the vehicle moved back over  
22 underneath the carport.

23 So, ladies and gentlemen, think about  
24 that. Where is the controverting testimony? There is  
25 none. The State has not shown you how the death of Mary

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1 which several of the State's witnesses conveniently  
2 forgot they went to, I think mostly because the State's  
3 witnesses are trying to figure out, well, do I need to  
4 acknowledge this? How do I insulate myself?

5 MR. MCCLELLAN: I object to what Mr. Hill  
6 thinks.

7 MR. HILL: Mr. Dion Holley. Kind of, the  
8 less I remember, the better off I am, the one that the  
9 police officer still told you is lying, even through the  
10 point where they're talking to him in the hospital. And  
11 let's not forget Kevin Walter, a person who really  
12 follows what I refer to as an unholy trinity. See the  
13 money, count the money, take the money, whatever it  
14 takes. At gunpoint? Sure. Why is it so difficult for  
15 us to figure out what that says about the people that  
16 were in that blue Lexus? It shouldn't be. It should  
17 be abundantly clear that those type of individuals with  
18 that type of mind-set would be very frightening to  
19 anybody, and certainly if you are one person against  
20 three individuals at that point in time.

21 Now, ongoing process, yes. But what is  
22 the uncontroverted testimony? Mr. Mamou gets on the  
23 witness stand and explains to you how things happen, and  
24 he testifies to you about what his interaction with Mary  
25 was. And you know, coincidentally, there is direct

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1 Carmouche occurred, other than to be able to establish  
2 that her cause of death was a bullet. Tragic?  
3 Absolutely. And this is always the most difficult part  
4 because, you know, the jury's made up of twelve  
5 individuals who never had to face situations like this  
6 on a personal basis, as a general rule, and we ask a  
7 great deal of them. But you have to make the decision.

8 You know Mary Carmouche was, you know, a  
9 young lady whose life was ended far before it should  
10 have been. And under the circumstances there, you'd  
11 have a great deal of empathy. And everybody's heart  
12 goes out for her, for her parents. Did you -- you know,  
13 there are some things -- and you have to treat it  
14 gingerly when you stand up here and you remind jurors of  
15 the facts and you ask them to consider everything, but  
16 you do have to consider the circumstances where she was  
17 that night and the fact that she was aware of what was  
18 taking place. That was clear from the evidence that the  
19 State's own witnesses had to finally admit.

20 The State wants this to be, you know, Dion  
21 was taking her out for dinner. Well, that's not going  
22 to work. Dion, if he wants to take her out for a meal,  
23 would have taken her on the north side of town, wouldn't  
24 have driven all the way from 45 over to Bennigan's on  
25 the South Loop. You know, I imagine as a father, I



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1 would want to cling to the memories, the good memories  
2 of Mary that are depicted in the photograph that the  
3 State introduced into evidence, and not have to deal  
4 with the anguish and pain that the other photographs  
5 suggest and the circumstances. And realizing that, you  
6 know, she chose to hang with people that were not good.  
7 And her demise came about as a result of that, directly  
8 or indirectly. It doesn't matter.

9

10 But ultimately your decision is not to try  
11 and find some retribution for her death, but to make  
12 sure that when you decide this case you have a clear  
13 mind to realize that the State has wholly failed in  
14 their effort to produce sufficient evidence of any kind  
15 beyond a reasonable doubt to show that that man is  
16 responsible for her death. Because they have not.

16

17 And why is it that the State doesn't  
18 controvert Mr. Mamou's testimony? Why not call Bug  
19 back? This idea that I've got the subpoena power, I  
20 would think you would want to know that. What is it  
21 that Bug says now? I think the theory here -- and this  
22 is what this case is. It's the State's theory of how  
23 things happened. And remember when I talked to you on  
24 voir dire about how flawed a situation can be and how  
25 people can put on blinders?

25

Police in this case decided what this case

37

1 photograph? Three minutes, and he was in and out of  
2 consciousness, and you spent six or seven minutes  
3 talking to him.

4 And what did Detective Novak tell you?  
5 What's the protocol for showing photospreads? Would you  
6 ever do it? And Mr. McClellan was fishing here when he  
7 asked him, well, maybe just to get a lead, not  
8 necessarily to tie up the whole case. No, absolutely  
9 not. He's not coherent. Person's not competent, we  
10 don't show it to them. Can't risk it.

11

12 Some interesting characteristics of this  
13 case, and the State spends a lot of time trying to  
14 explain away why they don't have that evidence. Well,  
15 you need to be asking them, where is the evidence? How  
16 come in today's society and this age of crime fighting,  
17 when they dispatch the medical examiner out to the scene  
18 on Lynchester, where they want the shooting of Mary  
19 Carmouche to have taken place, why is there no physical  
20 evidence? Why is there no microscopic evidence? No  
21 hairs, you know. Here's the one that's going to really  
22 kind of put you over the edge when you think about this  
23 poor young lady.

23

24 Let's inject the one thing that all people  
25 really get repulsed about, that there was a sexual  
assault. Where is there any evidence of that? Come on,

36

1 was about, and anything that was inconsistent with that  
2 was ignored and anything that was consistent with their  
3 theory was brought in. And think about this: How is it  
4 that Anthony Trail and Terrence Dodson might be able to  
5 go and relate facts to the police at some point? You  
6 know what? Each of the twelve of you and Mr. Kelly, the  
7 alternate, if you were asked to step outside right now  
8 and asked to relate some events about what a witness  
9 said or what a witness did, you each would be able to do  
10 that if you were paying attention to the testimony. And  
11 it could appear as though you had personal knowledge of  
12 that, based upon talking with somebody, even though you  
13 didn't.

14

15 You know, the story about the third car  
16 that we hear in this, quote, "off the record  
17 conversation" out in Louisiana, remember, Detective  
18 Bloyd was out there. And he says, Charles and I were  
19 having this off the record conversation. And I'll let  
20 you evaluate Officer Bloyd's testimony, starting when he  
21 tries to preempt or explain away the identification made  
22 in the hospital of Walter Scott (sic). Okay.  
23 Interesting, he wants to all of a sudden slip into,  
24 well, he was going in and out of consciousness. Maybe  
25 you were thinking at the time, boy, he's nitpicking  
about this ten minutes. When did he show them the

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1 ladies and gentlemen, fiber evidence, hair, microscopic  
2 stuff, all retrieved. You heard no evidence of that,  
3 none. And don't you know if that were available, they  
4 would have brought it to you. What about footprints?  
5 Remember Detective Foltz told you, well, yeah, there  
6 were some of the -- some of the sheriff's deputies were  
7 there, and they kind of walked through.

8 So, we're not sure what we've got there.

9

10 You can't rely upon raw emotion to decide a case of this  
11 magnitude. You have to look closely, and you have to  
12 ask questions. It's your responsibility. It's their  
13 burden. You have a man's life in your hands, and you  
14 have to decide a very important case. We ask that you  
15 do that, consistent with what the law asks you to do and  
16 what it directs you to do.

16

17 I know that there are always things that I  
18 forget to say. And always when I sit down I say, gosh,  
19 I wish I had said something else. I wish I had  
20 remembered to say these things. But the truth of the  
21 matter is, you heard all the evidence. You know where  
22 this case takes you, though. You know that the cast of  
23 characters in this situation, it's not like anything  
24 you've probably ever seen before. But ultimately, the  
25 responsibility lies with you.

25

You know, Dion Holley, I think, probably



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1 the two things I would say about him. As you look at  
2 him, remember what Mr. McDonald, the security guard,  
3 said? He's standing there after this girl has taken off  
4 under circumstances that he doesn't -- is not clear  
5 about what may have happened to her. Do you hear him  
6 screaming, you know, where's Mary? Is she okay? He's  
7 laughing about it. It's the last time I'm going to stop  
8 and help anybody. Kind of a flippant attitude. What  
9 does he do? Mr. McDonald says he's going for that gun.

10 Of course, Mr. Holley needs to be about as  
11 far away from that gun as he can when he talks to you  
12 and when he testifies. And he still continues the lie,  
13 even to the point where he's at the hospital. This is  
14 the type of evidence that the State asks you to rely  
15 upon, and they try to ask you to bridge the gap because  
16 you're not supposed to like Charles Mamou, Jr. You're  
17 supposed to like Mary Carmouche, which you can do. You  
18 can do that without hesitation; but that connection  
19 doesn't mean that he's guilty of capital murder, ladies  
20 and gentlemen.

21 Ultimately, it's your decision to make. I  
22 know that you're going to make a good decision after  
23 you've considered everything completely and thoroughly.  
24 And I ask you, just like Mr. Wentz did, after you go  
25 through all that, then be the voice; make the decision

40

1 that's correct based upon all of the evidence, based  
2 upon the indictment returned, based upon the jury  
3 charge, which is to find Mr. Mamou not guilty. Thank  
4 you.

5 THE COURT: Thank you, Mr. Hill.

6 Mr. McClellan, you may proceed. You have  
7 thirty-three minutes.

8 MR. MCCLELLAN: Thank you, Your Honor.

9 ARGUMENT OF THE STATE

10 BY MR. MCCLELLAN:

11 Please the Court? Ladies and gentlemen,  
12 when you heard the evidence when we began the trial, you  
13 were probably wondering, what kind of person is Kevin  
14 Walter? What kind of person is Dion Holley? We don't  
15 bring them to you as exemplary citizens of Harris  
16 County. There is not any doubt that when this deal  
17 started it was a rip on a rip. What my guys thought  
18 about doing -- my guys being Dion Holley, Kevin Walter,  
19 Terrence Gibson -- the defendant did. Dion Holley,  
20 Kevin Walter and Terrence Gibson may be guilty of  
21 planning to rip somebody off, see the money, count the  
22 money, take the money by force, if necessary.

23 But the mirror image of what they were  
24 thinking about doing is exactly what that man right  
25 there did. His objective was to see the dope, and he

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1 didn't even need to do that. I'm willing to kill people  
2 on the hope, the representation, that dope's in that  
3 car. And that's what he did. He shot and thought he  
4 killed Kevin Walter. He shot and did kill Terrence  
5 Gibson. He shot and hoped he killed Dion Holley. And  
6 he took that car for two reasons. To get the dope and  
7 to take out that last witness.

8 My people -- I shouldn't be using the  
9 word, my people. But the people the State brought you  
10 as its first witnesses, Dion Holley, Kevin Walter, are  
11 not exemplary citizens by any stretch of the  
12 imagination. They were all up to no good. They were  
13 involved in committing criminal activity, and they  
14 admitted that to you. And they lied. Initially they  
15 lied, like is common for people to do, and said, I  
16 wasn't doing anything wrong. They lied about their  
17 involvement to begin with. But you're going to see when  
18 you listen to their testimony and you put it altogether  
19 that there is a lot of things that came out exactly  
20 true.

21 So we have this rip on a rip. We have  
22 people that are trying to get money with dope they don't  
23 have, and a defendant is trying to get dope with money  
24 he doesn't have. And you know that from this bag filled  
25 with pieces of paper. Now the defendant would have you

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1 believe he was just cutting that up for some reason, and  
2 it was Bug Johnson that put it there to kind of clean up  
3 his floorboard. And that's just how he happened to get  
4 his fingerprints on it or whatever, when he was touching  
5 money the defendant had.

6 And on this rip on a rip, let me tell you  
7 who was out of their league. Kevin Walter, Dion Holley  
8 and Terrence Gibson. They were so far out of their  
9 league, they can't even see straight. The evidence is  
10 that Terrence Gibson has a 9 millimeter weapon on his  
11 person. Doesn't even have a round chambered. Doesn't  
12 even have a round chambered. He couldn't do anything  
13 with that gun if he wanted to. But the defendant was  
14 ready whenever he came to that deal. And the deal  
15 started out, we're going to take them to our side, to  
16 our turf, Cavalcade, Papa's, north side. This is where  
17 Kevin Walter and Dion Holley felt comfortable. We're  
18 going to take his money, hit the freeway. That's what  
19 we're going to do. Show us the money. And as soon as  
20 he shows us the money, we're going to take it and we're  
21 going to go. It's ideal. If we need to pull a gun and  
22 take it, we'll do that.

23 We've got Terrence Gibson. He can come in  
24 with a gun. We can take the money like that, on our  
25 turf. You talk about somebody out of their league. He

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1 got turned so far around that the defendant took him to  
2 his turf. You saw from the evidence and the aerial  
3 photograph how far the location that street is from  
4 where his father lives and his backyard. As the  
5 defendant said, in my comfort zone.

6

Now Mary Carmouche got involved, not  
7 because she had anything to do with this dope deal or  
8 anything else, but because they thought -- Dion Holley,  
9 Terrence Gibson, and Kevin Walter -- that the deal had  
10 fallen through, and they were going to go someplace to  
11 eat. And after she gets in the car is when the phone  
12 call comes, one more time. Bennigan's, let's go. And  
13 so she goes with them. She's as innocent as any person  
14 that's ever been talked about in this case. No  
15 responsibility for anything. And unfortunately, she's  
16 the one who lost her life over it.

17

They do this rip on a rip and they go over  
18 to Papa's; and they wanted to take him over to  
19 Cavalcade, because Dion Holley and Kevin Walter and  
20 Terrence Gibson want to get him to a location where  
21 they're more familiar with so they can see the money,  
22 take the -- count the money, and take the money, but  
23 didn't show the money.

24

Now he got -- the defendant gets up here  
25 on the stand and says, I had the money. I pulled up my

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1 why does he come in here and admit to his involvement on  
2 some of these things? Because he's charged with capital  
3 murder. I'll take anything less that you'll give me,  
4 because that saves his life. That's why. He takes  
5 responsibility for something less, because that's the  
6 only way his life can be spared. And that's exactly his  
7 motivation. Who has the motive to kill Mary Carmouche?  
8 Bug Johnson, the driver of the car who never got out.  
9 He's going to then, all of a sudden, after the defendant  
10 gets back to Fondren -- this never happened. Take her  
11 back to Fondren. She gets out, and she's just kind of  
12 standing around. Okay. I was over here talking to Bug  
13 for a while, kind of chilling. You know, what's going  
14 on? I don't think so. A seventeen-year-old girl who  
15 went to a location with three other occupants of the  
16 Lexus, and she hears all the gunfire. And from where  
17 she is, I don't see how she could keep from seeing Kevin.  
18 Walter shot, since he was shot while he's sitting in the  
19 car and the bullet zings right by her and lodges in the  
20 seat of the car right next to her.

21

And all this gunfire and three people that  
22 were in the car are no longer in the car, and in comes  
23 Charles Mamou, Jr., with a gun. And she just hops in  
24 the front seat and just goes on about her business.  
25 Doesn't want to leave. Doesn't want to get out. You

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1 pants and showed them the money when I was over at  
2 Lantern Point. Why didn't he show them the money then?  
3 If he showed him the money then, that's when something  
4 would have gone down. He didn't show him the money,  
5 because he never had the money. State's Exhibit 31,  
6 that's all the money he ever had right there. That's  
7 all the money he ever had.

8

And one thing he did tell the truth about,  
9 when he's out there on Lantern Point, he did toss that  
10 bag to Terrence Gibson. Because he tossed the bag to  
11 somebody, what do you do? You reach out to catch it.  
12 And when you reach out to catch it, you're not going for  
13 any gun. When you reach out to catch it, he pulls that  
14 9 millimeter and blows him away. Defendant would have  
15 you believe, oh, no, I saw he had a gun. I turned and  
16 ran and shot back like this. Right? You see a guy have  
17 a gun and you turn your back to him? I don't think so.

18

And just, you know, how does he do that  
19 and leave stippling, stippling on the wounds and on the  
20 arm? I tell you how you leave stippling on the wound  
21 and on the arm. You're this close when you shoot them.  
22 That's how you leave it, not running away, shooting back  
23 over your shoulder, not even looking. The physical  
24 evidence tells you he is lying. The defendant is lying.

25

We know -- you know, Mr. Hill says, well,

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1 talk about stretching credibility. Oh, I bet she got in  
2 the front seat, all right. Get in the front seat,  
3 bitch. Because I'm not going to drive away with her  
4 behind me. Nobody's going to do that. He just got  
5 through dusting three people. He's going to get her in  
6 the front seat, all right, to control her. And he  
7 would have you believe that he stopped at the stop sign.  
8 He was going to obey all the traffic laws, I'm sure, and  
9 give her a chance to get out, and then stopped on Main  
10 by a Burger King and gave her a chance to get out.

11

Didn't tell her to get out, just gave her  
12 a chance; because he wouldn't want to order her to do  
13 anything. Doesn't that stretch credibility, that she  
14 would then go with him and goes over to Fondren, and  
15 she's just kind of hanging around with the guys? And  
16 evidently, some of them decide to take her and kill her.  
17 Why? This is the guy here who's got the motive to kill  
18 her. She's the only one that can identify him as  
19 killing those three guys, which is what she thought he  
20 did. There is the motive right there. What is Bug  
21 Johnson's motive to kill her? Nothing. Not any motive.  
22 Doesn't make any sense, so you know what happened.

23

Now Mr. Wentz makes a point and says,  
24 well, you see that silver bullet and that (inaudible)  
25 bullets. You bet you they are. And you know what they

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1 told -- what Mr. Baldwin, what the firearms examiner  
2 told you, is that the thing about this bullet is that it  
3 was chambered -- not chambered, excuse me -- it was in  
4 the magazine, has a magazine mark that compares and  
5 makes it identical to one of the casings that was in the  
6 magazine of the firearm that -- of the casing that was  
7 left at Lantern Point.

8 Now several times you may have gone, why  
9 are you asking about that? You can put different brands  
10 of ammunition in a clip and shoot it; so, you could have  
11 some Remington Peter, some Smith & Wesson, and some  
12 whatever. And the answer is, sure, you can. The fact  
13 that you fire more than one type of brand of ammunition  
14 out of a gun is not unusual. And the fact that there  
15 were five cartridges of one type maybe between there and  
16 Lantern Point and Lynchester, he had to reload. Or  
17 maybe this is the next one in line and there were  
18 several more like it, or they may have been whatever  
19 combination. But what is important is -- is that this  
20 was placed in the same magazine that the fired bullets  
21 were placed in, and thus, fired through that same  
22 firearm, or could have been fired through that same  
23 firearm. This wasn't fired. This was ejected.

24 We talked about the fact how you might  
25 eject one; because if you're not sure, like Terrence

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1 Gibson would have had to do, he would have had to rack  
2 in order to pull back the slide in order to put one in  
3 the chamber. Well, if there is one already in the  
4 chamber and you do that, not knowing if there is one in  
5 the chamber or not, you're going to eject one. And  
6 this -- we know that would have happened, because it has  
7 the magazine marks.

8 But all of the evidence indicates that the  
9 person who has a motive, the person who has the  
10 opportunity, and the person who has the ability to  
11 commit this crime is none other than Charles Mamou, Jr.  
12 The physical evidence shows you that his fingerprint is  
13 on this bag -- not on the bag, but on papers within the  
14 bag. The firearms evidence, we know from there, he  
15 admits having shot rounds -- at the number he's unsure  
16 of -- at Lantern Point Drive. So we know that the  
17 casing that has the magazine mark was fired in a weapon  
18 in the possession of this defendant, and that's the same  
19 magazine that has this bullet in it that was found at  
20 the Lynchester address where Mary Carmouche was.

21 And no, Mr. Hill, it doesn't make me any  
22 difference whether or not Mary Carmouche was shot and  
23 killed at the Lynchester address or someplace else and  
24 brought there. It has nothing to do with it. It's the  
25 fact that the physical evidence ties this defendant to

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1 that killing. It's not -- you'll never see anywhere in  
2 the charge that says, if you find from the evidence that  
3 Mary Carmouche was killed at Lynchester. Doesn't say  
4 that. It says, was killed after being kidnapped, in the  
5 course of kidnapping.

6 And we talked about the fact, what they  
7 refer to as necessity in the charge, referred to as  
8 justification, that while someone conceivably could say,  
9 well, you need to get in the car to get out of there.  
10 But it's not placing yourself in the defendant's shoes.  
11 It's what a reasonable person in the defendant's  
12 position would have done. What a reasonable person in  
13 the defendant's situation would have done. And I  
14 suggest to you that even if a reasonable person would  
15 have got in that car and driven off with a person in the  
16 backseat, a reasonable person, unless -- it doesn't say  
17 unless a reasonable person who was killed or thought  
18 they killed three people, a reasonable person would have  
19 let that person out or ordered that person out at the  
20 immediate, first opportunity. And that did not happen.

21 The time she got out is when she got out  
22 at Lynchester, went to the backyard, where he killed her  
23 in cold blood to eliminate any witnesses. And, of  
24 course, you know, Mr. Hill would have you believe that,  
25 well, because the car was moved from one location there

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1 at 10800 Fondren to a second location, from the front  
2 back up into the back, the only person that could have  
3 moved that would have been Howard Scott. Huh? Why  
4 wouldn't the defendant move the car? He had to have the  
5 car, because that's where the dope was. And I'm sure  
6 there was somebody out there with a sock, or socks on  
7 their hands, looking through that car for dope; and I  
8 think you'll find him sitting right over here.

9 We talked about the fact that, well, Kevin  
10 Walter tentatively I.D.'d Howard Scott. Where in the  
11 world has there ever been any evidence that Kevin Walter  
12 and Howard Scott know anything about each other? Kevin  
13 Walter is clear on the other deal. He never went --  
14 doesn't even know where 10800 Fondren is, according to  
15 the evidence. Why would he identify Howard Scott  
16 tentatively about anything? Didn't have anything to do  
17 with commission -- Howard Scott wasn't in the car.  
18 Howard Scott wasn't in the deal. There is no -- unless  
19 Kevin Walter is now going to be a coconspirator with  
20 this, and this is all a grand plan just to kill Mary  
21 Carmouche.

22 The person who has the motive to kill and  
23 the motive to lie is this defendant right here. Kevin  
24 Walter and Dion Holley lied to begin with. Not any  
25 doubt about that. And they take responsibility for



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1 that, and we brought that to you. When they took the  
2 witness stand, there was no reason for them to lie.  
3 Don't you believe, don't you know, if someone had tried  
4 to kill you and, in Kevin Walter's case, came perilously  
5 close to doing so, that you would want the person who is  
6 responsible for that to be held responsible for their  
7 conduct, not somebody who didn't do it.

8 What satisfaction do you ever get out of  
9 having someone convicted who didn't do the crime? So  
10 you know from what Kevin Walter and Dion Holley are  
11 telling you, is the truth. They're telling you about  
12 this defendant's involvement, the shooting that occurred  
13 out there. They don't know what happened on Lynchester  
14 with Mary Carmouche, because they weren't there. The  
15 only two people there was the defendant and Mary  
16 Carmouche. But the physical evidence tells you what  
17 happened there.

18 But then he had the motive to take the  
19 car, the motive to take Mary Carmouche. And talk about  
20 credibility. As you're talking about Charles Mamou, who  
21 is serving, based upon State's Exhibit 112 -- you take  
22 it and look at it -- five years, for possession with  
23 intent to deliver, in the Louisiana penitentiary. Now,  
24 does he have a motive to come over here and try to get  
25 off this? And he said he went to Angola, where the

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1 lifers go. Why is a person who only got five years  
2 being sent to Angola, where the lifers go?

3 He would have you believe that everybody  
4 lied. Everybody lied about everything. Ted Bloyd, the  
5 detective, must have lied. Whenever the defendant told  
6 him, off the record, and he said -- well, you know what  
7 off the record was? Off the record means we don't make  
8 a recorded statement, written, video, or taped. Not  
9 recorded. It's kind of like when we say off the record,  
10 she stops typing. Off the record, that a third car  
11 pulls up and fires and shoots and does this damage.

12 Well, by the time he gets to trial, and  
13 having sat through all the evidence before it's his  
14 opportunity to get on the stand, you figure, that dog  
15 don't hunt. You mean, a third car pulled up, and let me  
16 guess, opened fire? Didn't hit any of the cars except  
17 maybe the Lexus, went through the window and hit that,  
18 shot three people out there, Kevin Walter, Dion Holley,  
19 Terrence Gibson? And then lo and behold, neither the  
20 car the defendant was in, nor the defendant or his  
21 driver were ever hit. Must be quite a sharpshooter out  
22 there on this pull-up drive-by.

23 Didn't happen. Didn't happen, and you  
24 know it didn't happen. His story doesn't wash, because  
25 there would not be stippling on Terrence Gibson if the

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1 shooting had occurred like he said it occurred. He says  
2 Johnson left first. I don't know who left first.  
3 You've had different people. Holley says Johnson left  
4 first. Johnson says he left second. But here's  
5 something to think about: If Johnson left first, then  
6 how does he get behind the defendant to flash his  
7 lights? Defendant says he leaves -- Johnson's left. He  
8 gets in the car.

9 Necessity says I must take this car to  
10 extricate myself from this situation. I drive to the  
11 stop sign. I stop. I give Mary Carmouche an  
12 opportunity to get out. She declines that opportunity.  
13 Decides to get in the front seat. I then drive down on  
14 Main Street and stop there again and give her another  
15 opportunity to get out near Burger King or whatever.  
16 She declines that opportunity. And then as I'm driving  
17 down, a car comes up behind me flashing its lights. I  
18 think it's the cops. It may be the other -- some of  
19 these guys after us again.

20 Well, if Johnson left first, how does he  
21 get behind the defendant? You know, he was supposedly  
22 following Johnson. I don't think so. It doesn't wash  
23 with what he said. Doesn't make any sense that Bug  
24 Johnson, or anybody else, or Shawn England never even  
25 heard from him or anything else. It's kind of the

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1 old -- it's kind of what we refer to in our business as  
2 the SODDI defense. Some other dude did it. Why is he  
3 trying to tell us that? To save his skin.

4 I suggest that credible, believable,  
5 reliable evidence shows that this defendant is guilty of  
6 capital murder, just as charged in the indictment. That  
7 Johnson, or Dodson had no motive to come up here and to  
8 lie. Now he said -- well, Terrence Dodson said when he  
9 testified that he was afraid he was going to be charged  
10 with capital murder. Now he admits being involved in --  
11 and nobody can ever attest that Terrence Dodson was up  
12 there at the time this happened on Lantern Point Drive,  
13 or Bennigan's, or anyplace else. He's the cousin of the  
14 defendant. He comes and testifies, you know, that's not  
15 something easy for him to do, having to testify against  
16 his -- against his cousin. And you saw the extent to  
17 which it had to be drawn out of him. But he told you  
18 what the defendant told him, that he did the shooting,  
19 that he was hoping -- and asking about these other  
20 people, hoping that they all died, that he took Mary  
21 Carmouche to a location where there is a an abandoned --  
22 I think he used the word abandoned house -- took her to  
23 the backyard, and shot and killed her.

24 Now Terrence Dodson, let's say he was  
25 concerned, back in December of 1998, whether or not he



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1 was going to be charged with capital murder; because he  
2 doesn't know much about what the situation is. Well,  
3 here we are in October of 1999. So are you trying to  
4 tell me he's going to then come up and lie on the stand  
5 for something that hasn't happened over almost a year?  
6 Nothing's been filed on him. And all of a sudden, he's  
7 going to lie on the stand against his cousin to say  
8 things he doesn't know? Make stuff up? I don't think  
9 so.

10 You saw Terrence Dodson up there. And he  
11 volunteered about being involved, having the .25 caliber  
12 weapon with him. He's going to try to take that money  
13 over there, over on Cavalcade. And, of course, he was  
14 partly a role player, too; because much was made during  
15 the -- not mentioned during final argument -- but much  
16 was made during the trial about the fact that the  
17 defendant tried to give them -- Kevin Walter -- the  
18 money there at Papa's, and Kevin didn't want it. But  
19 you also remember testimony about Terrence Dodson or the  
20 guy in the car. And back then, I think the only thing  
21 State's Exhibit 88 shows is getting out of the car and  
22 saying, Bring me my money back. He was a role player.  
23 He was an actor for them. He wasn't about to give him  
24 any money.

25 First of all, he never had any money.

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1 Didn't have any money. He couldn't have given Kevin  
2 Walter the money there. That's why this deal never went  
3 down. Don't show me the money, because he didn't have  
4 any money. Couldn't give him the money, because he  
5 didn't have any money. And they couldn't show him the  
6 dope, because he didn't have any dope.

7 Caught up in this mismatch was Mary  
8 Carmouche, and she was kidnapped at that scene based  
9 upon all the events that brought her to that location.  
10 She's abducted, taken from there against her will, after  
11 seeing three of her friends shot. The only person that  
12 gets in the car is the defendant, Charles Mamou, with  
13 that steel gun that he had that he used to shoot the  
14 other people with.

15 And he would have you believe that she's  
16 just nonchalant. Jump up in the front seat. I can't  
17 describe -- and maybe it's good reason I can't  
18 describe -- the horror that must be going through that  
19 girl's mind of what all happened, what all was going to  
20 happen, and what all did happen. He took her to a  
21 location in Harris County. He shot her and killed her,  
22 and that's capital murder. And that's what we ask you  
23 to find him guilty of, because that's what the law and  
24 the evidence calls for.

25 Sure, there is a lot of people that have

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1 dirty hands in this situation. That doesn't exonerate  
2 this defendant. We're here today judging him, not  
3 judging what other bad decisions other people made.  
4 We're here judging him. And don't let the fact they did  
5 bad things, did illegal things, exonerate him. He's not  
6 worthy of that exoneration. You heard his testimony.  
7 You saw his demeanor there on the witness stand. You  
8 saw what type of person he is. And you saw the remorse,  
9 or total lack thereof, that he has of the crime that's  
10 been committed.

11 If you had been charged with capital  
12 murder, didn't do anything, wouldn't you have been a  
13 little incensed on the stand? Wouldn't you have been a  
14 little angry that, I'm on trial for my life, and I  
15 didn't do anything, and people are prancing up here and  
16 lying about what's going on? Did you see any of that  
17 whenever you saw the defendant testify? No, because he  
18 knows the truth. And now, after all the evidence, you  
19 know the truth. We just ask you to return a verdict the  
20 evidence and the law calls for, guilty of capital  
21 murder. Thank you for your time.

22 THE COURT: Thank you, Mr. McClellan.

23 Which one is Mr. William Kelly?

24 Mr. Kelly, the bailiff's going to take you back to the  
25 Judge's chambers. I'm going to personally thank you in

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1 just one moment. If you'll take him back, please.

2 Members of the jury, the exhibits which  
3 were offered and admitted -- that's the key word,  
4 admitted -- during the course of trial, you may, upon  
5 written request, ask for all or part of the exhibits  
6 which have been admitted during the trial. We'll get  
7 them right back to you immediately. Also, the testimony  
8 was referred to by one of the attorneys. If there is a  
9 request for testimony, there must be a disagreement  
10 between two or more jurors before that testimony may be  
11 read back. So please be very specific. Please, I ask  
12 if you do request testimony to be read back, there is a  
13 disagreement between two or more jurors. Also, the  
14 person who is on the stand, whether it was direct or  
15 cross-examination, either by the State or the defense.  
16 Please be very specific as to the exact issue that is in  
17 disagreement. We'll read that back to you. Please be  
18 patient, because it takes quite a while for Ms. Knobloch  
19 to go through her whole notes to get exactly what you  
20 want. Nothing more, nothing less.

21 We'll take you over to lunch around noon.  
22 It's very strict instructions. Once you leave the jury  
23 deliberation room, you're technically still in  
24 deliberations. So you're not allowed to separate even  
25 to use the restrooms, so do that here. You'll be in a

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1 group at all times. You cannot have any contact with  
2 anybody, either by the telephone or just a casual, say,  
3 hello to anyone. You'll be kept in the group at all  
4 times. And once you're away from the jury deliberation  
5 room, the moment you step out of there, please don't  
6 have any conversation about the case itself. Talk about  
7 anything else over lunch, but please, not one word about  
8 this case. Wait until you return to the jury  
9 deliberation room to commence your deliberations.

10 And right now I'm going to ask you to  
11 please go back to the jury deliberation room and begin  
12 your deliberations. Thank you.

13 (Jury retires at 11:19 a.m. to  
14 deliberate.)

15 (Whereupon a verdict was reached at 3:00  
16 o'clock p.m., and the verdict was taken by Judge Harmon.

17 THE COURT: Both sides ready?

18 (Jury is brought in and seated.)

19 THE COURT: Good afternoon, members of the  
20 jury. Y'all can be seated. I'm Judge Bill Harmon. As  
21 you all know, Judge Wilkinson had to go to Nacogdoches  
22 this morning to attend a funeral. He asked me this  
23 afternoon if I would be willing to receive this verdict  
24 if he was not back. And we've talked to Judge  
25 Wilkinson, and he's about ten miles from Houston. But

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1 possibility of a case being -- that the result of a case  
2 being written up in the newspaper. So I'm going to  
3 instruct you all, obviously, not to re -- I'm not  
4 telling you not to read the newspaper, period. But if  
5 you happen to see an article that you feel like involves  
6 this case, I'm going to instruct you all to not read it.  
7 You are obviously aware you're not to discuss the case  
8 with your friends and family until the trial is over.  
9 The trial is obviously not over. So if you do happen to  
10 see something in the newspaper or on television  
11 regarding this case, don't watch it, don't read it.  
12 We'll see y'all tomorrow morning at 9:00.

13 Anything else?

14 MR. MCCLELLAN: Nothing further, Your  
15 Honor.

16 MR. HILL: No, Your Honor.

17 (Court adjourned at 3:10 p.m.)  
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1 we decided to go ahead and not wait for him.

2 So, it's my understanding y'all have  
3 reached a verdict. Who is the foreman? Mr. Foreman,  
4 would you please pass the verdict to the bailiff?  
5 Mr. Mamou, would you please rise? We, the jury, find  
6 the defendant, Charles Mamou, guilty of capital murder,  
7 as charged in the indictment. So say you all? Members  
8 of the jury, regarding the verdict finding the defendant  
9 Charles Mamou, Jr., guilty of capital murder, is that  
10 the verdict of each and every one of you? Is there  
11 anybody on the jury who did not vote a finding of guilty  
12 to the offense of capital murder? That's your verdict.

13 All right. What we're going to do now,  
14 members of the jury, is we'll be in recess this  
15 afternoon until 9:30 tomorrow morning. Judge Wilkinson  
16 told me that evidently you all were told there might be  
17 a possibility of being sequestered tonight. I think you  
18 all brought some extra clothing. He said you all did  
19 not need to do that for tomorrow. You do not need to  
20 bring clothing. The basic plan, I think, is to complete  
21 all the evidence in the punishment phase of the trial  
22 tomorrow, then argue the case first thing Thursday  
23 morning.

24 So, let me also advise you that obviously  
25 in cases involving capital murder, there is the

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1 THE STATE OF TEXAS )

2 COUNTY OF HARRIS )

3 I, Pamela Kay Knobloch, Official/Deputy  
4 Official Court Reporter in and for the 179th District  
5 Court of Harris County, State of Texas, do hereby certify  
6 that the above and foregoing contains a true and correct  
7 transcription of all portions of evidence and other  
8 proceedings requested in writing by counsel for the  
9 parties to be included in this volume of the Reporter's  
10 Record, in the above-styled and numbered cause, all of  
11 which occurred in open court or in chambers and were  
12 reported by me.

13 I further certify that this Reporter's Record  
14 of the proceedings truly and correctly reflects the  
15 exhibits, if any, admitted by the respective parties.

16 I further certify that the total cost for the  
17 preparation of this Reporter's Record is \$ \_\_\_\_\_ and  
18 was paid by Harris County.

19 WITNESS MY OFFICIAL HAND this the \_\_\_\_ day of  
20 \_\_\_\_\_, 2000.

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APPELLANT: CHARLES MAMOU, JR.  
CAUSE NO. 800112

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## REPORTER'S RECORD

VOLUME 22 OF 25 VOLUMES

TRIAL COURT CAUSE NO. 800112

CHARLES MAMOU, JR. ) IN THE DISTRICT COURT

Appellant )

)

VS. ) HARRIS COUNTY, TEXAS

)

THE STATE OF TEXAS )

Appellee ) 179TH JUDICIAL DISTRICT

\*\*\*\*\*

## PUNISHMENT HEARING

\*\*\*\*\*

On the 13th day of October, 1999, the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable Mike Wilkinson, Judge Presiding, held in Houston, Harris County, Texas:

Proceedings reported by computer aided transcription/stenograph machine.

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1 (Jury is brought in and seated.)

2 THE COURT: Please be seated. Ladies and  
3 gentlemen, in Cause Number 80112, we are proceeding now  
4 in the punishment phase of the trial.

5 Miss Connors.

6 MS. CONNORS: Your Honor, at this time  
7 we'd reoffer all the evidence at the guilt stage of the  
8 trial.

9 MR. HILL: We reurge all our objections  
10 that were made during the course of the trial.

11 THE COURT: Call your first.

12 MS. CONNORS: Dr. Eric Beyer.

13 DR. ERIC BEYER,  
14 having been first duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MS. CONNORS:

17 Q. Doctor, could you introduce yourself to the  
18 jury, please?

19 A. Hi. I'm Dr. Beyer. I'm a general surgery  
20 resident at University of Texas, and I was there on the  
21 evening that the victim was shot.

22 Q. Doctor, where did you go to college?

23 A. University of Tennessee in Knoxville.

24 Q. What did you get your degree in?

25 A. Biochemistry.

5

1 A. Cardiovascular.

2 Q. How long does it take to become a  
3 cardiovascular surgeon after med school?

4 A. Anywhere between seven and ten years after  
5 medical school.

6 Q. How much longer do you have?

7 A. Another three years, three-and-a-half years.

8 Q. Do you have your medical license here on file  
9 in Harris County, Texas?

10 A. Yes, I do.

11 Q. Doctor, let's direct your attention back to  
12 December 7th, 1998. Were you working in the emergency  
13 room or the trauma room at Hermann Hospital?

14 A. Yes, I was. I was a third-year resident in  
15 general surgery there.

16 Q. Were you assisting another doctor?

17 A. Yes, Dr. Duke.

18 MS. CONNORS: Your Honor, at this time I  
19 enter into evidence -- defense counsel has already seen  
20 them -- State's Exhibit 127, the medical records for  
21 Kevin Walter, also known as Kane Wilford.

22 MR. HILL: No objection.

23 THE COURT: State's 127 is admitted.

24 MS. CONNORS: I'd also offer the medical  
25 records of Kevin Walter from the hospital, State's

4

1 Q. Where did you go to med school?

2 A. University of Tennessee, also.

3 Q. After you finished medical school, what did you  
4 do?

5 A. I came to Houston and joined the general  
6 surgery residency of the University of Texas.

7 Q. When you say general surgery, what does that  
8 mean?

9 A. That includes all types of surgery training,  
10 including anything from plastic surgery to cardiology  
11 surgery, trauma surgery. And we get trained as general  
12 surgeons. We're able to take care of a lot of different  
13 types of surgical diseases.

14 Q. When did you come to Houston to start your  
15 training?

16 A. In 1994, in July of 1994.

17 Q. Where did you start your training?

18 A. At Hermann Hospital, I believe it was.

19 Q. And after you left Hermann Hospital, where did  
20 you go?

21 A. We rotate through a lot of different hospitals,  
22 but I did do a two-year fellowship at Texas Heart  
23 Institute in cardiac transplants.

24 Q. What specialty do you hope to have when you  
25 finish your training?

6

1 Exhibit 129, Your Honor.

2 MR. HILL: No objection.

3 THE COURT: State's 129 is admitted.

4 Q. (BY MS. CONNORS) Doctor, when Kevin Walters  
5 was brought to the hospital, can you tell the jury how  
6 he was brought to the hospital and what condition he was  
7 in?

8 A. He was brought into the trauma room, and we  
9 usually get a call from the emergency medical system.  
10 The paramedics are out in the field telling us,  
11 basically, what kind of condition some of the patients  
12 are coming in. And he was categorized as a severely  
13 injured gunshot wound. But we were put on alert for,  
14 and we prepared a number of doctors and nurses, and we  
15 actually were there, gowned and ready, waiting for these  
16 severely ill patients, or severely injured patients.  
17 And they told me that this was a man that was shot in  
18 the chest and belly, and that's how we kind of  
19 anticipated him coming in.

20 And then a call was coming into the trauma  
21 room, and he was -- he was conversing. He was able to  
22 talk. A lot of gunshot wound victims aren't able to  
23 when they come in. And he, obviously, had bullet entry  
24 sites in his chest and abdomen. And we typically strip  
25 the patients down and go through a regimented procedure,

7

1 assessing their vital signs, et cetera. And we  
2 immediately knew he would need to go to the operating  
3 room from the time he came in the door and was severely  
4 injured from these gunshot wounds.

5 Q. What is the procedure when he's on the  
6 operating table? What do you do initially after you  
7 take the vital signs?

8 A. When they're in the trauma room, we take all  
9 the vital signs and we kind of assess whether or not  
10 they need to go to the operating room. And with gunshot  
11 wounds, they're pretty basic. When you see a gunshot  
12 wound to the belly, usually you know immediately you  
13 need to go to the operating room; and we alert the  
14 operating room. And within about twenty or thirty  
15 minutes, we get the patient up. Once they have got  
16 their I.V.s and they're resuscitated with fluid and  
17 blood, we'll get them upstairs and do the operation.  
18 We'll put them on the table and then open their abdomen  
19 up and take a look inside. You never know what you're  
20 going to find until you open the belly up, of course.

21 Q. When you opened the belly up, what did you  
22 find, Doctor?

23 A. We found a very large injury to the -- or  
24 laceration to the liver, that was at the mid portion of  
25 the liver. And there was a lot of blood in the abdomen

8

1 that we had to clean out initially. And we noticed that  
2 it was coming from the liver, so we knew where -- what  
3 we had to focus on at that point in time. You know, you  
4 obviously want to go for the spots that are bleeding the  
5 most and control them, and then worry about all the rest  
6 of the injuries that you find in the belly. And we  
7 noted a large amount of blood spewing up from his liver.

8 Q. Did you try to stop that spewing of the blood?

9 A. Yeah. There are several maneuvers that we do  
10 in the operating room rather quickly to determine --  
11 first of all, we'll try to pack the wound with some  
12 sponges just to prevent blood from coming out and block  
13 it up like a dam. And then what we'll do is we'll --  
14 what we do is a Pringle Maneuver, which is a maneuver  
15 where you actually put your fingers around the artery  
16 that goes to the liver, the major artery that goes to  
17 the liver, and clamp it off with your fingers, and then  
18 take a look at the lacerations and see if there is a lot  
19 of blood still coming out from there. And that will  
20 determine whether or not it's mainly an arterial or a  
21 venous injury. Arterial would generally stop or slow  
22 down, and venous would probably be just continuing on.

23 See, we noted that the bleeding slowed  
24 down tremendously when we did that and that we needed to  
25 tie off his hepatic artery to prevent him from bleeding

9

1 to death.

2 Q. Where is the hepatic artery? What does that  
3 do?

4 A. Hepatic artery is the blood flow into the  
5 liver, the arterial flow into the liver, and the liver  
6 has two separate circulations, essentially, that has an  
7 arterial inflow, which compromises about twenty percent  
8 of the blood flow to the liver. And it has a large  
9 vein, which compromises about eighty percent of the  
10 blood flow to the liver. And the artery can be taken,  
11 if necessary. There is some risk to doing that; but in  
12 the face of a life-threatening hemorrhage, this is a  
13 maneuver that we felt was appropriate and was performed.

14 Q. Did Mr. Walters have -- was there a life  
15 threatening hemorrhage?

16 A. Absolutely.

17 Q. Doctor, after you tie off the hepatic artery,  
18 then what do you do?

19 A. We look around the belly and see if there were  
20 any other injuries. And depending on how stable the  
21 patient is at that time, you know, we will either do a  
22 very extensive look around or we'll try to just get out  
23 of there. Generally, we're looking for any -- the major  
24 injuries we're looking for are injuries to a colon or  
25 intestine, stomach, things that would bring us back

10

1 later on if we didn't catch off the bat. So that's what  
2 we did. We took a look around and didn't find any. He  
3 was relatively unstable at that point in time, receiving  
4 blood, et cetera; so we opted to not look for any  
5 diaphragmatic injuries or anything of that nature that  
6 might delay his postoperative care.

7 Q. Doctor, when you say you tied off the hepatic  
8 artery, did that affect any other organs that caused you  
9 to have to remove them?

10 A. Yes. It affects the gallbladder. The  
11 gallbladder supplier is from -- it's supplied by the  
12 hepatic artery. And hence, you take the hepatic artery.  
13 Otherwise, there is a potential for arsenic necrosis  
14 and essentially dying. So you want to take it out.

15 Q. Can you spell necrosis for the court reporter,  
16 please?

17 A. N-E-C-R-O-S-I-N-G.

18 Q. Does that mean the tissue dies?

19 A. Yeah, from lack of blood supply.

20 Q. Doctor, was it necessary to put any type of  
21 drains in his body to get certain fluids so they didn't  
22 build up in his body?

23 A. We did have to put a chest tube in, which is  
24 routine. I believe that was put down in the trauma room  
25 as part of the preparation to get up to the operating



11

1 room. And the chest tube is there to see how much blood  
2 is in the chest. If a great deal of blood rushes out,  
3 over a liter, then typically we'll also perform an  
4 operation on the chest. If there is not a great deal of  
5 blood that comes rushing out, or if it doesn't come out  
6 at a certain rate thereafter, then we -- you know, we  
7 usually opt to just watch the drainage and not to do an  
8 operation on the chest.

9 Q. Doctor, did the patient have any other gunshot  
10 wounds? Were there gunshot wounds to the shoulder?

11 A. Yes. I think we documented three gunshot  
12 wounds, three entry sites; one to the shoulder, the left  
13 shoulder, and one into the chest, and one into the  
14 belly.

15 Q. Did they take a picture -- a radiologist take  
16 pictures of the person's body to determine if there were  
17 any bullets or fragments or what's going on inside?

18 A. Typically, we don't just take pictures to  
19 determine where the bullet is. That is not an absolute.  
20 But we do that just to see if there are any injuries to  
21 certain organs, and then that's what we do. We took a  
22 chest x-ray and did an abdominal film on the victim.

23 Q. When they took the chest x-ray and abdominal  
24 film, did you see any bullets or fragments in  
25 Mr. Walter's body?

12

1 A. I believe we found some fragments in the left  
2 shoulder region; and it might have been some fragments  
3 in his abdomen, if I'm not mistaken.

4 Q. After the surgery was finished, what part of  
5 the hospital was Mr. Walters in?

6 A. He was in the intensive care unit.

7 Q. What does that mean?

8 A. That's a very highly specialized area of care.  
9 Usually there is one nurse per patient, and they're  
10 continually monitored. Every minute they're monitored  
11 and assessed.

12 Q. And at some point was he moved to a different  
13 part of the hospital?

14 A. Eventually he was moved to an intermediate care  
15 unit, which is a step down from the intensive care unit.  
16 And then from there, he moved to the floor.

17 Q. Was -- after the surgery on December 7th, was  
18 he then breathing on his own?

19 A. Not immediately, no. He was on a ventilator  
20 for some time. I don't know exactly how long. That's  
21 pretty typical for a severely injured individual to be  
22 on the ventilator for a time.

23 Q. At some point on December 13th, was he  
24 reintubated and put back on the ventilator?

25 A. He was.

13

1 Q. What does that mean, to be intubated?

2 A. It's where you take a -- it's a metal device.

3 And you put it in somebody's mouth, and you raise their  
4 jaw up from the inside; and you can look inside the  
5 throat and see the vocal cords, and you place a tube  
6 through the vocal cords. And then you hook the tube up  
7 to a breathing machine, which will blow oxygen in.

8 Q. And the reason he was put back on the  
9 ventilator was because he was -- he had respiratory  
10 failure?

11 A. He had respiratory failure, yes.

12 Q. What does that mean?

13 A. Well, people that come into the hospital that  
14 have had abdominal incisions or operations on their  
15 abdomen and have been injured in the lung, like the  
16 victim was, sometimes it takes a while to recover your  
17 strength and your ability to breathe. You use a lot of  
18 your muscles in your abdomen and your chest. And if  
19 you're sore, you may not use them like you would  
20 normally. And that will prevent you from breathing, and  
21 you get pneumonia in your lungs. You can get what's  
22 called diaphragms (phonetically).

23 Q. Can you help her out with that?

24 A. I don't know if I can spell that one myself,  
25 but the lungs there will collapse, and they will cause

14

1 you to -- it can set you up for pneumonia, can cause you  
2 respiratory distress.

3 Q. Doctor, when Mr. Walter was admitted to the  
4 hospital, was a drug screen done on his urine?

5 A. Yes, it was.

6 Q. What was the results of that drug screen?

7 A. In reviewing the medical records, I noted that  
8 he was opiate positive on the initial drug screen.

9 Q. What does that mean?

10 A. That just means that, you know, there  
11 potentially could be a prescription drug or any illicit  
12 drugs being used by the patient.

13 Q. An opiate, is that also -- is Tylenol 3  
14 considered an opiate?

15 A. Yes, it is.

16 Q. Is Vicodin?

17 A. Vicodin.

18 Q. What is Vicodin used for?

19 A. For pain.

20 Q. Is that also an opiate?

21 A. Yes.

22 Q. Was there also another drug that was found in  
23 the system that was by the -- I can't even pronounce  
24 it -- P H E N O T H I A Z I N E?

25 A. Phenothiazine? Is that right?

15

1 Q. Yes, sir.

2 A. I think that was part of the screening for  
3 opiates, and I believe they broke that down. You know,  
4 they further analyzed it to determine what particular  
5 drug the broad category might be under. And they found  
6 it was a particular class called a Phenothiazine class  
7 of drug.

8 Q. So we're not talking about two different drugs.  
9 We're just talking about kind of a subsection more  
10 specific?

11 A. I believe that's correct.

12 Q. What are types of Phenothiazines?

13 A. They're -- these are drugs that are  
14 prescription medications that are tranquilizers of  
15 sorts. Haldol would be one of the Phenothiazines. And  
16 Chlorpromazine is another drug, and it would be under  
17 Phenothiazine. So these are all prescription  
18 medications.

19 Q. Doctor, Mr. Walter was in the hospital from  
20 approximately December 7th, 1998, to December 31st,  
21 1998; is that right? That's correct?

22 A. That's right.

23 Q. Was he later re-admitted to the hospital soon  
24 after?

25 A. Yes, he was.

16

1 Q. When would that have been, January 9th?

2 A. That was January 10th, according to the records  
3 I've seen.

4 Q. What was he readmitted to the hospital for?

5 A. He was readmitted for abdominal pain and fever  
6 and generally not feeling well, and that was -- that's  
7 what he came to the hospital for.

8 Q. Did he have infection as a result of the  
9 wounds?

10 A. We did some studies on him, and his white blood  
11 cell count was elevated. And that prompted us to obtain  
12 some further studies, and we found that he had a couple  
13 of fluid collections that were related to the gunshot  
14 wound and surgery that will possibly infect -- actually,  
15 they were infected, and they needed to be drained.

16 Q. And how long did Mr. Walter stay that time?

17 A. He stayed until the 16th, according to the  
18 records.

19 Q. Doctor, I'm going to ask you to step down to  
20 the board, please, and show the jury on this diagram  
21 where Mr. Walter's -- Walter's wounds were on State's  
22 Exhibit 126. Then explain to them, what is it you saw?

23 A. When he came into the trauma room, we saw  
24 wounds -- of course, we strip the patient down, as we do  
25 for all trauma patients. And we saw an injury of the

17

1 clavicle -- or the shoulder, the left shoulder. And  
2 there was another gunshot wound here in the chest, right  
3 or below the nipple. And there was another gunshot  
4 wound higher in the abdomen, in the left upper quadrant.

5 Q. Was there an exit wound with respect to the  
6 chest, Doctor?

7 A. There was another wound that was -- let's see.  
8 It was on this side, on his right that was there.

9 Q. Could you tell whether that was an exit wound?

10 A. Well, it's tough to always tell. You never  
11 know if it's an entry or exit wound. There are ways of  
12 determining, but you usually leave that up to the  
13 pathologist to determine. But there are some signs that  
14 would indicate that that was the exit wound from this  
15 chest wound, that we didn't see a bullet fragment in  
16 that area and the chest is hollow. It's a hollow  
17 viscus. You know, there is a hollow cavity there; and  
18 so, bullets can kind of make their way rapidly through  
19 the chest cavity and out. So that was probably the exit  
20 wound.

21 Q. And where is the gunshot wound that affected  
22 his liver?

23 A. This is the one that affected his liver. It  
24 must have angulated from left to right. The liver sits  
25 over here on this side of the body and takes up this

18

1 whole space over here. And it went that way and went  
2 into the liver around there and tore through the liver.

3 Q. You can return to your seat, Doctor?

4 MS. CONNORS: Your Honor, at this time I  
5 enter into evidence State's Exhibit 126.

6 MR. HILL: No objection.

7 THE COURT: State's 126 is admitted.

8 MS. CONNORS: Judge, I'll pass the  
9 witness.

10 MR. HILL: No questions.

11 THE COURT: Call your next.

12 MR. MCCLELLAN: State would call Troy  
13 Hebert. May I proceed, Your Honor?

14 THE COURT: Please.

15 TROY JAMES HEBERT,  
16 having been first duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. MCCLELLAN:

19 Q. State your name for the record, please.

20 A. Troy James Hebert.

21 Q. How are you employed?

22 A. I'm a sergeant in the Louisiana State Police in  
23 Lafayette, Louisiana.

24 Q. Okay. The Louisiana State Police, is that a  
25 state-wide organization, or is it assigned to a

19

1 particular municipality?

2 A. It's state-wide. I'm stationed out -- I'm  
3 assigned to Troop I, which is in Lafayette Parish. It's  
4 a state-wide organization.

5 Q. Okay. Let me direct your attention, if I  
6 might, back to December the 17th of 1996. Were you with  
7 the Louisiana Department of Public Safety at that time?

8 A. Yes, sir, I was a senior trooper.

9 Q. Okay. And how long have you been with the  
10 State Police in Louisiana?

11 A. At this time?

12 Q. Yes.

13 A. Thirteen years.

14 Q. What was your duties back in December of 1996?

15 A. I was a senior trooper assigned to Troop I.

16 THE COURT: What is that word you're  
17 saying?

18 THE WITNESS: Senior.

19 THE COURT: Assigned to?

20 THE WITNESS: Troop I. It's a district we  
21 go through, like the letter I.

22 Q. And were you on patrol that day?

23 A. Yes, sir, I was on an evening shift, 5:30 p.m.  
24 to 5:30 a.m.

25 Q. And did you have an occasion on that day of

20

1 December the 17th, 1996, to meet a person that you came  
2 to know as Charles Mamou, Jr.?

3 A. Yes, I did.

4 Q. Do you recognize that person here in the  
5 courtroom today?

6 A. Yes, sir, he's seated at the table here on the  
7 right with a white and red striped shirt.

8 MR. MCCLELLAN: Your Honor, may the record  
9 reflect the witness has identified the defendant?

10 THE COURT: It will.

11 Q. (BY MR. MCCLELLAN) About what time of the day  
12 or evening did you come in contact with Mr. Mamou, if  
13 you recall?

14 A. It's approximately 10:47 p.m. at night.

15 Q. And what drew your attention to the defendant?

16 A. I was northbound on an interstate, I-49, inside  
17 Lafayette Parish when I heard a vehicle traveling  
18 southbound in an opposite direction from me at a high  
19 rate of speed.

20 Q. By high rate of speed, did you clock the speed  
21 or make a determination what the speed was?

22 A. Yes, sir, I used a radar. It was 100 miles an  
23 hour in a posted 55 zone.

24 Q. What did you do after determining the vehicle  
25 was going 100 miles an hour?

21

1 A. Identified the vehicle as it was crossing the  
2 opposite side. He was coming into a town called  
3 Carencro. They have some lights in the area. I had to  
4 cross a median to pursue the vehicle. It was  
5 approximately three miles, three-and-a-half miles before  
6 I was able to get close to even stop him.

7 Q. Did the defendant stop his vehicle?

8 A. Yes, sir, he exited off of I-49, Pontdesmouton  
9 Road, which is just north of I-10, onto the exit ramp.  
10 Rather than stop on a shoulder, he stopped adjacent to  
11 the Pontdesmouton Road in the lane of travel.

12 Q. Can you spell that for the court reporter?  
13 Because she's going to have to do it later, so --

14 A. P-O-N-T-D-E-S-M-O-U-T-O-N.

15 Q. Did you then approach the vehicle?

16 A. I exited the vehicle on the driver's side, as I  
17 always do. The subject was in the vehicle. I could see  
18 him on a -- using a cell phone.

19 Q. Okay.

20 A. He didn't exit. I had to honk the horn to get  
21 his attention. Told him to exit the vehicle, at which  
22 time he rolled the driver's side window down and  
23 hollered out, I'm on the phone. I told him to exit the  
24 vehicle, put the phone down. He exited the vehicle,  
25 still with the phone in his hands. I told him to put

22

1 the phone down again.

2 Q. Did he put the phone down?

3 A. At that time he did, yes, sir.

4 Q. What happened then?

5 A. Got him to step back. I observed it was a  
6 rent-a-car with commercial tag. I asked for his  
7 driver's license. He showed me a license. Asked him  
8 who the vehicle was rented to. He had some papers. It  
9 was a female subject, a Miss Johnson, on the form for  
10 the rental agreement. It had no additional drivers. He  
11 said it was his girlfriend, at which time I asked him  
12 to -- well, at this time I had, I believe, smelled the  
13 odor of alcoholic beverage. So I checked on the  
14 Horizontal Gaze Nystagmus.

15 Q. What is a Horizontal Gaze Nystagmus?

16 A. Involuntary jerking of the eyes. If someone  
17 has been drinking, the more alcohol they consume, the  
18 more nystagmus or more jerking displayed.

19 Q. How did he do on that test?

20 A. He had very little nystagmus. It's my opinion  
21 he didn't -- was not impaired. Didn't have enough to  
22 drink to the point of being impaired.

23 Q. What did you do then?

24 A. Asked for the keys to the car, had him sit back  
25 in the vehicle at this point. So I get back to my unit

23

1 to radio in, check on the status of the vehicle, and  
2 also run a check on his license.

3 Q. Where is he at this time? Is he back in his  
4 vehicle?

5 A. I asked him to sit back in the vehicle. I take  
6 the keys.

7 Q. What happened after that?

8 A. Well, I'm running the check, and the name was  
9 familiar. There was a deputy in the area working this  
10 night, who I work with sometimes. I asked him to come  
11 by. He was a K-9 Unit. When he arrived at the scene,  
12 we got the subject back out of the vehicle and asked  
13 permission to search the vehicle, and prior to doing so,  
14 searched him. The deputy found a weapon. He was  
15 wearing a black leather jacket. The deputy found a  
16 weapon, a 9 millimeter in his back waistband. There was  
17 no magazine in it. Deputy put the dog in the vehicle.  
18 The dog alerted on the car in the areas, the  
19 compartments. We couldn't find anything there. We  
20 couldn't find a magazine for the gun.

21 Q. When the K-9 Unit was brought there, the K-9  
22 dog was trained to detect what?

23 A. This one was trained for narcotics.

24 Q. When you say the dog alerted, what does that  
25 tell you when a dog alerts?

24

1 A. Dog alerts on a car, the dog's sensing or  
2 smelling narcotics.

3 Q. Were any narcotics, though, found in the car?

4 A. No, sir.

5 Q. What charges were filed against him, if any, as  
6 a result of this encounter?

7 A. Based on a criminal records check on him, he  
8 was, at the time, a convicted felon for possession with  
9 intent to distribute rock cocaine. I charged him with  
10 speeding, 100 in a 55 and being a felon in possession of  
11 a firearm.

12 Q. Being a convicted felon, that was the case he  
13 was on probation for at the time?

14 A. That's correct.

15 Q. And was he then arrested and taken to some jail  
16 facility?

17 A. Yes, sir. I placed him under arrest and  
18 brought him to Lafayette Parish and booked him there.

19 MR. MCCLELLAN: I pass the witness.

20 CROSS-EXAMINATION

21 BY MR. HILL:

22 Q. Officer Hebert, my name is Wayne Hill. You and  
23 I have not met before, correct?

24 A. No, sir.

25 Q. I had to clear my mind. When you say that

25

1 you're driving on I-49, you are on the opposite side of  
2 the highway from the vehicle driven by Mr. Mamou,  
3 correct?

4 A. That's correct.

5 Q. And when you indicated that took three to  
6 three-and-a-half miles to get close enough to detain  
7 him, you're not suggesting that he was trying to evade  
8 you during the three-and-a-half-mile chase, correct?

9 A. That's correct.

10 Q. Because it took you a while to get off the  
11 traffic lane that you were on, cross the median, and  
12 then catch up to him because of the speed of his  
13 vehicle?

14 A. That's right. I didn't put my lights on till I  
15 got close enough to stop.

16 Q. Once you got close enough to stop and you put  
17 the lights on, approximately how long did it take him to  
18 pull over to reduce the speed from the 100 miles an  
19 hour? You say you clocked him up to the point where he  
20 stopped on Pontdesmouton Road?

21 A. Approximately two-tenths of a mile, because he  
22 was exiting -- he was getting ready to take the exit.  
23 When I saw that, I figured it would be a good place to  
24 get him stopped.

25 Q. When you say he looked like he was taking the

26

1 exit, did he have his turn signal on, indicating he was  
2 exiting off the highway?

3 A. No. The speed was reducing. He was in the  
4 right lane, merging toward the exit ramp.

5 Q. So it appeared he was already heading in that  
6 direction at the time you activated your emergency  
7 signal?

8 A. That's correct.

9 Q. Then he does pull over, and you walk up to the  
10 vehicle. He doesn't make any attempts to evade you or  
11 do anything at that point. He -- basically, he's  
12 preoccupied, being on the phone?

13 A. That's correct.

14 Q. Now let me ask you: This stretch of I-49, that  
15 runs north off of I-10 up to Sunset?

16 A. It runs all the way to Freeport.

17 Q. How far is Sunset from the I-10/I-49  
18 intersection?

19 A. Approximately eleven miles.

20 Q. Now at the time that you exit -- you stop the  
21 vehicle and he's using a cell phone, when he steps out  
22 and he's still using it, do you have your gun drawn at  
23 that point?

24 A. No, sir.

25 Q. Do you communicate with him to, you know, get



27

1 off the phone? How do you communicate with him to get  
2 off the phone, because you want to talk to him about  
3 stopping him and for speeding?

4 A. By telling him to put the phone down and step  
5 out of the vehicle.

6 Q. And at that point, he does do that?

7 A. When I stopped him, he was on the phone. I  
8 honked the horn, told him to exit the vehicle. He  
9 rolled down the window, said, I'm on the phone. I said,  
10 Exit the vehicle. Put the phone down. He exited, of  
11 course, still with the phone in his hand. I told him to  
12 put the phone down.

13 Q. So he actually rolls the window down, and  
14 that's when you tell him to get out of the car and get  
15 off the phone?

16 A. That was the second time, yes, sir.

17 Q. When he gets out of the car, is he just holding  
18 the phone? I mean, is he holding the phone, or is he  
19 still talking on the phone?

20 A. He's talking on the phone.

21 Q. And once he's out, do you hear what he's saying  
22 on the phone?

23 A. No, sir. I'm behind his vehicle. I'm probably  
24 about twenty-four, twenty-five feet back.

25 Q. When he gets out, where does he put the phone?

28

1 A. What he's done with it? I think he put it in  
2 his -- if I recall correctly, in the pocket of his  
3 jacket.

4 Q. It was a leather jacket with, like, several  
5 pockets on the front?

6 A. Yes.

7 Q. When is it you asked him for his license and  
8 registration or vehicle identification information?

9 A. Once he put the phone down, I asked him to step  
10 back with the license.

11 Q. Where did he have to retrieve the license from?

12 A. I don't recall.

13 Q. He did produce a valid license for you, though?

14 A. Yes, sir.

15 Q. And it was at that time that he attempted to  
16 produce -- was it paperwork that showed this was a  
17 rental car?

18 A. That's correct, paperwork, yes, sir.

19 Q. Do you recall for what period of time the  
20 rental car agreement extended?

21 A. I don't recall how long it was rented. It was  
22 rented to a female subject on the form. We always check  
23 additional drivers or not. Lot of times we'll contact  
24 the rental company to see if they want to pick up the  
25 car since the person that's renting it was not in the

29

1 vehicle.

2 Q. Did you do that?

3 A. I had the office try to contact, I think, the  
4 renter.

5 Q. And what was Miss Johnson's first name? Do  
6 you recall?

7 A. Wanda, something like that.

8 Q. Do you know where she lived?

9 A. No, sir.

10 Q. Now after he produces that information to you,  
11 shows the license and shows you the rental agreement,  
12 you're not going to arrest him at that point, are you?

13 A. A citation was a form of arrest at that point,  
14 yes.

15 Q. But when you give a person a citation, is that  
16 basically -- is that like a speeding ticket in  
17 Louisiana, where you have to appear in a particular  
18 parish court to answer the charge at some later date?

19 A. Yes, sir.

20 Q. Do you use the phrase, instanter, in Louisiana?

21 A. No, sir.

22 Q. All right. You didn't, at that point in  
23 time -- it was not your intention to arrest him on the  
24 spot, take him into custody, and transport him for the  
25 speeding ticket?

30

1 A. If it was just a speeding, no, sir.

2 Q. Okay. So after you had the initial  
3 information, which you were not going to base an arrest  
4 on, you then go ahead and say you smell alcohol on his  
5 breath?

6 A. Excuse me?

7 Q. You smell alcohol on his breath after you got  
8 his license?

9 A. Right.

10 Q. After you had gone ahead and seen papers  
11 showing it's a rental car?

12 A. Right.

13 Q. At that point you were going to issue him a  
14 citation; you were not going to place him under arrest  
15 right at that point?

16 A. No, sir. I say no, sir. I haven't finished my  
17 investigatory stop at that point. He was stopped for a  
18 speeding violation, which he could have been brought to  
19 jail for.

20 Q. My question is -- and I think I asked you very  
21 specifically -- at that point in time, after he showed  
22 you the valid license, after he showed you the  
23 information from the rental car company, at that point  
24 it was not your intention to place him under arrest and  
25 actually take him into physical custody at that point,

31

1 correct?

2 A. I wasn't through, no, sir. I wasn't through  
3 with what I was doing.

4 Q. And so, how long are you talking to him before  
5 you smell alcohol on his breath?

6 A. Pretty immediately.

7 Q. After you run these tests, this Horizontal Gaze  
8 Nystagmus test, and you have an opportunity to see him  
9 and observe him, you ultimately concluded that he's not  
10 impaired and should not be arrested for driving under  
11 the influence of alcohol, correct?

12 A. That's correct.

13 Q. Now something is suspicious to you, though, as  
14 a police officer. You got kind of a hunch that this car  
15 may be used for something other than transporting  
16 somebody at 100 miles an hour, right?

17 A. His name was pretty well-known in the area.

18 Q. Right. He dealt drugs, right?

19 A. Yes, sir.

20 Q. So that's why you called the K-9 Unit out?

21 A. That's one reason, yes, sir.

22 Q. And that K-9 Unit is trained to detect the odor  
23 of some type of drugs, and then the whole purpose of  
24 having the K-9 Unit come out is when they alert. Then  
25 you search to see if you can find any drugs, correct?

33

1 A. Uh-huh.

2 Q. So within seven or eight minutes of pulling  
3 this vehicle over, you've already got a K-9 Unit that  
4 alerts. And at that point, how is it that you find the  
5 weapon?

6 A. When the officer arrived, he was right in the  
7 area. I don't know exactly where, but he was real close  
8 by. We had been working together a little bit. Asked  
9 the subject to come out of the vehicle and said, Is it  
10 okay to search the car? He said, It's fine, but prior  
11 to doing that, pat him down; and the deputy was patting  
12 him down for me.

13 Q. Okay.

14 A. And felt bulging from the backside of the  
15 leather jacket and told him to put his hands on the car.  
16 He started to turn.

17 Q. Did he go ahead and put his hands on the car?

18 A. No. He started to turn away.

19 Q. So, you're not taking that to be that he was  
20 going to try and attack you or anything, are you?  
21 You're not suggesting that to this jury, are you?

22 A. I don't know what he was going to do. I  
23 just -- as a form of resisting and --

24 Q. It was not a form of violent resistance? I  
25 mean, he turned. And when the officer said, Put your

32

1 A. He had already given permission to search.

2 Q. Did not resist your request to search the  
3 vehicle?

4 A. That's correct.

5 Q. You don't know how long that rental car was in  
6 a rental fleet, do you?

7 A. No, sir.

8 Q. Don't know whether or not Miss Johnson had been  
9 driving the car earlier, or anybody else, do you?

10 A. No, sir.

11 Q. Ultimately there are no charges filed against  
12 Mr. Mamou for any kind of drug case, correct?

13 A. In connection with this stop, no, sir.

14 Q. Right. And when he steps from the vehicle, how  
15 long a period of time is it between the time he exits  
16 the vehicle and the time that a weapon is found in his  
17 possession?

18 A. From about seven or eight minutes.

19 Q. Seven to eight minutes?

20 A. Yes, sir.

21 Q. And the finding of the weapon occurs at what  
22 point, chronologically? You stop him. He's speeding.  
23 You get the license. You get the rental agreement. You  
24 check. You give him the Horizontal Gaze Nystagmus. K-9  
25 Units are already there?

34

1 hands up on the car, right, kind of like what?

2 A. When the officer felt the bulging, he told him  
3 to turn and face the car. And, also, the deputy felt  
4 the weapon, felt the bulging. That's when he turned and  
5 started to turn back. He said, Turn and put your hands  
6 back on the car.

7 Q. And then he did so?

8 A. He did.

9 Q. And then the officer retrieved a gun, an empty  
10 gun?

11 A. Right, hollow point 9 millimeter.

12 Q. No clip in it?

13 A. Found no magazine on him or in the vehicle.

14 Q. And when you ran the registration or the  
15 identification on that weapon, it came back registered  
16 to Sedonia Gotch (phonetically), didn't it?

17 A. Came back, as far as our records, as not  
18 stolen.

19 Q. Not stolen. Now did you learn that the reason  
20 that Mr. Mamou was traveling at 100 miles an hour,  
21 according to your radar, was because he was responding  
22 to a burglary that had occurred at home?

23 A. No, sir. He told me he was going to visit his  
24 girlfriend.

25 Q. Did he name her?

35

1 A. The subject that the vehicle was rented to.

2 Q. That would be Miss Johnson?

3 A. That's correct.

4 Q. Ultimately, this charge of felon in possession  
5 of a firearm is dismissed, correct?

6 A. I believe so. I think they dismissed it. I  
7 didn't get to talk to the prosecutor, Floyd Johnson. I  
8 think they amended that.

9 Q. The felon in possession of a firearm was  
10 dismissed?

11 A. From what I understand, that's correct.

12 MR. HILL: I have no further questions.

13 REDIRECT EXAMINATION

14 BY MR. MCCLELLAN:

15 Q. When you say amended, do you know -- what do  
16 you mean?

17 A. Reduced to a lesser charge.

18 Q. Carrying a weapon?

19 A. That's correct.

20 Q. Now, did he tell you why he had a weapon on  
21 him?

22 A. Yes, sir. He said some people were after him  
23 and he was scared, so he was going to use it to scare  
24 them back.

25 MR. MCCLELLAN: Pass the witness.

37

1 STEVEN HOOPER,

2 having been first duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MS. CONNORS:

5 Q. Sir, introduce yourself to the jury, please.

6 MR. HILL: Judge, may we approach one  
7 moment?

8 (Off-the-record discussion.)

9 THE COURT: Ladies and gentlemen, if you  
10 would, please go back in the jury room.

11 (Jury out.)

12 MR. HILL: Judge, we object to the State  
13 being able to introduce any evidence regarding an  
14 allegation of an extraneous murder offense alleged to  
15 have occurred on September 5th, 1998, wherein the State  
16 intends to call witnesses to try and place the defendant  
17 at the last scene with the person named as the  
18 complainant. We believe that to do so without the proof  
19 beyond a reasonable doubt that the defendant is  
20 responsible for that, in light of the fact that no  
21 criminal charges have been filed against him for that  
22 violation, either violates the due process clause of the  
23 Fifth Amendment of the U.S. Constitution, as well as the  
24 14th Amendment of the U.S. Constitution, also, Article  
25 1, Section 19 of the Texas Constitution, and Article

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1 RECROSS-EXAMINATION

2 BY MR. HILL:

3 Q. Now, you just made a statement regarding that  
4 the charge was reduced to carrying a weapon. Isn't it a  
5 fact that the only charge that he ended up entering a  
6 plea on was a speeding charge?

7 A. I'm not certain. Like I said, I didn't get to  
8 talk to Floyd Johnson, the prosecutor. I spoke to one  
9 of the ladies in the office last week, and that was what  
10 they had told me.

11 Q. So that's just kind of hearsay from hearsay,  
12 speculation that he ultimately entered some type of --

13 A. I have no idea how they ended up.

14 Q. So that was not your testimony when you  
15 answered quickly to Mr. McClellan, whether it was  
16 reduced down to carrying a weapon? You don't know  
17 whether it was reduced?

18 A. That's what I heard.

19 Q. Right.

20 MR. HILL: No further questions.

21 MR. MCCLELLAN: I have nothing further.

22 THE COURT: Call your next, please.

23 MS. CONNORS: Officer Hooper, Your Honor.

24 THE COURT: Proceed, please.

25 MS. CONNORS: Thank you, Your Honor .

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1 1.04 of the Code of Criminal Procedure. It's also a  
2 violation of the defendant's 6th Amendment right to  
3 confrontation under the U.S. Constitution, as well as  
4 the corollary article, Section 10, as well as Article 1,  
5 Section 10 of the Texas Constitution, and Article 1.05  
6 of the Texas Code of Criminal Procedure.

7 It also constitutes cruel and unusual  
8 punishment under the 8th and 14th Amendments to the U.S.  
9 Constitution, as well as Article 1, Section 13 of the  
10 Texas Constitution. We believe that Article 37.07(1) of  
11 the Texas Code of Criminal Procedure is unconstitutional  
12 for all of those reasons, for allowing the State to be  
13 able to proffer testimony that they cannot prove beyond  
14 a reasonable doubt and implicates the defendant in the  
15 commission of the crime charged or alleged.

16 For those reasons, we move that none of  
17 this evidence be allowed in the presence of the jury.

18 THE COURT: Objection is overruled.

19 Bring them in.

20 (Jury is brought in and seated.)

21 THE COURT: Please be seated.

22 Continue, please.

23 MS. CONNORS: Thank you, Your Honor.

24 Let's start again.

25 Q. (BY MS. CONNORS) Would you please introduce

39

1 yourself to the jury, Officer?

2 A. Steven Hooper.

3 Q. And where do you work?

4 A. Police Officer for the City of Houston.

5 Q. And how long have you been a Houston Police  
6 Officer?

7 A. Approximately two-and-a-half years.

8 Q. Are you from Houston?

9 A. Yes.

10 Q. And where did you go to high school?

11 A. Westfield.

12 Q. And after you went to high school, what did you  
13 do?

14 A. I went to college at Steven F. Austin.

15 Q. What did you study?

16 A. Accounting.

17 Q. What part of the Houston Police Department are  
18 you assigned?

19 A. Right now I'm assigned to the Gang Task Force.

20 Q. Back in September of 1998, where were you  
21 assigned?

22 A. I was a patrol officer.

23 Q. And as a patrol officer, when you're dispatched  
24 to a call, what does that mean?

25 A. The dispatcher will give you a call on your

40

1 computer. You go out to the call, and you handle it as  
2 need be.

3 Q. Back in September of 1998, what part of the  
4 city were you assigned?

5 A. Southwest Houston.

6 Q. And on September 5th, 1998, were you dispatched  
7 to the 14600 block of Allover?

8 A. Yes, ma'am.

9 Q. And approximately what time were you dispatched  
10 by the H.P.D. dispatcher?

11 A. Approximately 10:01 p.m.

12 Q. What time, approximately, did you arrive?

13 A. Approximately about 10:06 p.m.

14 Q. Were you with anyone else, or were you riding  
15 alone?

16 A. I was with my partner, Officer Marcus.

17 Q. When you got to that location in the 14600  
18 block of Allover, what is that location?

19 A. It's a gas station right there at the corner of  
20 Allover and West Fuqua.

21 Q. Is it also an auto repair shop?

22 A. Well, auto repair shop, yes, ma'am. Used to be  
23 a gas station.

24 Q. Is that Mannings Auto Repair?

25 A. Yes, ma'am.

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1 Q. Is the 14600 block of Allover -- is that  
2 located in Houston, Harris County, Texas?

3 A. Yes, ma'am.

4 Q. When you got there, Officer Hooper, what did  
5 you find?

6 A. I observed about ten or fifteen people standing  
7 over a man that H.F.D. was preparing to load up on a  
8 stretcher to take him to the ambulance.

9 Q. When you say H.F.D., that's Houston Fire  
10 Department paramedics?

11 A. Yes, sir -- yes, ma'am.

12 Q. Could you tell how the person that the  
13 paramedics were trying to place on the -- load into the  
14 ambulance -- could you tell how they were injured?

15 A. I couldn't, no, ma'am.

16 Q. Did you speak to the witnesses that were there?

17 A. Yes, ma'am.

18 Q. Were you able to determine how the person was  
19 injured?

20 A. The paramedics had told me that he had been  
21 shot.

22 Q. Were there any witnesses to the shooting when  
23 you arrived at approximately 10:06 p.m.?

24 A. None that would say anything about the  
25 shooting.

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1 Q. Did you ask them if they had seen the shooting?

2 A. Yes, ma'am.

3 Q. And did you and Officer Marcus secure the  
4 scene?

5 A. Yes, ma'am.

6 Q. What does that mean?

7 A. Anybody other than needed personnel, such as  
8 the paramedics or other police officers, you get them  
9 out of the scene and you -- as you see on TV, you use  
10 the crime scene tape. And that's kind of like your  
11 barrier, where nobody is allowed in but people that need  
12 to be in there.

13 Q. The area surrounding the victim who had been  
14 shot, could you please tell us what you saw?

15 A. I observed numerous -- looked like rectangular  
16 shapes of newspaper clippings or paper clippings, a blue  
17 jean jacket, a ball cap, a beer can. Basically, that's  
18 all I can remember right now.

19 Q. When you first saw the numerous newspaper  
20 clippings, what did you think it was?

21 A. To me it looked like it was in the shape of  
22 dollar bills.

23 Q. Did any other officers from the police  
24 department arrive?

25 A. Yes, ma'am, a C.S.U. Officer and homicide



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1 investigators.

2 Q. Did you wait until they arrived?

3 A. Yes, ma'am.

4 Q. Let me show you what's been marked for  
5 identification purposes only as State's Exhibit 114,  
6 115, 116, 117, 118, and 119. Do you recognize these  
7 photographs?

8 A. Yes, ma'am.

9 Q. Could you place them facedown, please? Do  
10 State's Exhibit 114 through 119 fairly and accurately  
11 show the scene as you saw it back on September 5th,  
12 1998, at the 14600 block of Allover?

13 A. Yes, ma'am.

14 MS. CONNORS: Your Honor, at this time I  
15 tender to defense counsel State's Exhibit 114 through  
16 119 and offer them into evidence.

17 MR. HILL: Judge, we reurge the objection  
18 we made outside the presence of the jury.

19 THE COURT: It's overruled. State's  
20 Exhibits 114 through 119 are admitted.

21 Q. (BY MS. CONNORS) Officer Hooper, would you  
22 please stand up? And please keep your voice up so  
23 everybody can hear you. What is that a photograph of?

24 A. It's a photograph of Mannings Auto Repair.

25 Q. 114?

44

1 A. It's Allover, West Fuqua.

2 Q. Is that the yellow tape -- is that the crime  
3 scene tape that you have placed around this location?

4 A. Yes, ma'am.

5 Q. And State's Exhibit 115, what are the little  
6 white -- is that the paper that you talked about, the  
7 newspaper clippings?

8 A. Yes, ma'am.

9 Q. There was also clothing and a jean jacket?

10 A. Yes, ma'am.

11 Q. And a red ball cap?

12 A. Yes, ma'am.

13 Q. State's Exhibit 116. Looks like some dark  
14 discoloration on State's Exhibit 116. And there is an  
15 item there, kind of looks silver. What is that, sir?

16 A. That's a beer can.

17 Q. And could you describe the condition of the  
18 beer can?

19 A. It was crushed on one end. It appeared like  
20 maybe it had either been stepped on or run over.

21 Q. For the record, there is a white dot placed  
22 next to the beer can, and I wrote the words beer can.  
23 And State's Exhibit 117, what does that show, sir?

24 A. That's another picture of the clothing and the  
25 ball cap laying on the ground.

45

1 Q. The items at the forefront of the picture,  
2 they're all white right here, is that the newspaper --

3 A. Yes, ma'am.

4 Q. -- among other places on the picture; is that  
5 right?

6 A. Yes, ma'am.

7 Q. And State's Exhibit 118, sir, what does that  
8 show? What is that here?

9 A. That's the red or orange ball cap.

10 Q. Blue, what is that?

11 A. That's the blue jean jacket.

12 Q. And the white pieces of newspaper; is that  
13 correct?

14 A. That's correct.

15 Q. State's Exhibit No. 119, is that a close-up  
16 view of the newspaper?

17 A. Yes, ma'am.

18 Q. Is there also a plastic bag in this picture?

19 A. Yes, ma'am.

20 Q. Officer Hooper, did you try to talk to the  
21 victim who had been shot?

22 A. Yes, ma'am.

23 Q. Was he able to speak with you?

24 A. No, ma'am.

25 MS. CONNORS: At this time I'd pass the

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1 witness.

## 2 CROSS-EXAMINATION

3 BY MR. HILL:

4 Q. Officer Hooper, let's go back now. We're  
5 talking about an incident on September 5th of 1998,  
6 correct?

7 A. That's correct.

8 Q. Did you prepare an offense report regarding  
9 your participation in this investigation?

10 A. My partner did a supplement.

11 Q. And does the District Attorney's Office have  
12 that? Do you know?

13 A. Yes, ma'am -- yes, sir, I'm sorry.

14 Q. Did you review it before you testified today?

15 A. Yes, sir.

16 Q. How many times have you met with the District  
17 Attorney's Office regarding your testimony in this case?

18 A. Just once.

19 Q. Is that today?

20 A. Yesterday.

21 Q. Yesterday. Okay.

22 MR. HILL: May I have just a moment,  
23 Judge?

24 THE COURT: Yes.

25 Q. (BY MR. HILL) Now at the time you went out

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1 there, you're the first unit to arrive five minutes  
2 after the dispatch goes out. You said there is ten to  
3 fifteen people standing over a man that the paramedics  
4 were tending to, correct?

5 A. Yes, sir.

6 Q. In your efforts to secure the scene and to make  
7 sure that nothing happens with the scene, does that also  
8 include attempting to get the names of people that are  
9 potentially witnesses?

10 A. Yes, sir.

11 Q. Would it be your responsibility to conduct  
12 initial interviews or at least gather some information  
13 from those people so that when the homicide detectives  
14 arrive you can share that information with them?

15 A. Yes, sir.

16 Q. And, of course, you did that in this instance,  
17 correct?

18 A. I attempted to try and talk to them.

19 Q. Do you recall listing the name of individuals  
20 that were potential witnesses in this case?

21 A. There was three in there that we felt that  
22 might have known something about it. We listed them in  
23 the report.

24 Q. And you have the names of those people, their  
25 address, telephone numbers, and ways to get in touch

48

1 with those people, correct?

2 A. It's all in the offense report.

3 Q. And that information in that offense report was  
4 shared with the homicide detectives when they ultimately  
5 come out and take over the scene?

6 A. Yes, sir.

7 Q. How soon after you arrived did the homicide  
8 detectives get there?

9 A. It would be a guess. Probably about an hour,  
10 hour-and-a-half maybe.

11 Q. So we're talking somewhere before midnight,  
12 maybe 11:00 to 11:30, maybe quarter to 12:00 --

13 A. Maybe.

14 Q. -- on the evening of September 5th, 1998?

15 A. Yes, sir.

16 Q. Do you remember which homicide detectives came  
17 to the scene?

18 A. I don't recall the name, no, sir.

19 Q. Do you know Detective Novak?

20 A. Not personally.

21 Q. Do you recall that he did not come to the  
22 scene?

23 A. I don't recall what the detectives' names were.

24 Q. How many detectives came to the scene?

25 A. Two detectives.

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1 Q. How long did they stay there, if you know?

2 A. An hour maybe.

3 Q. And what were they doing during that one-hour  
4 period of time that you observed?

5 A. They were looking over the evidence, talking to  
6 the Crime Scene Unit, taking pictures and whatnot,  
7 telling the Crime Scene Unit what to do, or what they  
8 thought was important, and talking it over with each  
9 other.

10 Q. Okay. Do you stay there, then, throughout the  
11 time that they're there?

12 A. Yes, sir.

13 Q. At the end of their one-hour tour, is the crime  
14 scene tape taken down and the scene is cleared?

15 A. Yes, sir.

16 Q. So the entire investigation runs from  
17 approximately 10:06 to sometime maybe 12:30, quarter to  
18 1:00 in the morning?

19 A. Approximately, maybe longer, maybe shorter.  
20 I'm not really sure of the exact time.

21 Q. Okay. But in any event, anything that needed  
22 to be done relative to the physical scene was done there  
23 at that time?

24 A. Yes, sir.

25 Q. Now the ten to fifteen people standing over the

50

1 paramedics, did you learn where these people had been  
2 just before the paramedics arrived? Is that  
3 information you're trying to glean from talking to these  
4 people?

5 A. The information I was trying to get from them  
6 is if anybody had seen what had happened.

7 Q. Okay. Is your partner also attempting to do  
8 that at the same time?

9 A. Yes, sir.

10 Q. And as a result of speaking to these  
11 individuals, were there any identifications or any  
12 suspects developed, you know, like a general description  
13 of people that you would be looking for to give to the  
14 homicide detectives?

15 A. No, sir.

16 Q. Do you know during the time you stayed there  
17 whether or not that ultimately occurred?

18 A. That somebody was listed as a suspect? No,  
19 sir, not while I was there.

20 Q. So you do not recall that three black males  
21 were being looked for in connection with this case?

22 A. No, sir.

23 Q. No arrests were made?

24 A. No, sir, not by us.

25 Q. How many Crime Scene Units were involved?

51

1 A. Just one.

2 Q. When I say Crime Scene Unit does that mean one  
3 officer, also?

4 A. Yes, sir.

5 Q. And you don't know who that was, either?

6 A. I don't know his name, no, sir.

7 Q. And when you said that the beer can appeared to  
8 be stepped on or run over, you don't know how the  
9 condition of the beer can ended up the way it was,  
10 right?

11 A. How it got that way?

12 Q. Right.

13 A. No, sir.

14 Q. And you don't know at what point in the night,  
15 if it was that night, that it had gotten there?

16 A. That's correct.

17 Q. What is the lighting like out there?

18 A. There is a streetlight, I believe, right at the  
19 corner. And there is, I believe, a Hi Lo Auto Parts  
20 right across the street. So it's some pretty decent  
21 lighting there.

22 Q. Did you put out any kind of broadcast or any  
23 type of information relative to a vehicle that you were  
24 looking for?

25 A. No, sir. Nobody told us anything.

53

1 A. I'm a police officer with the City of Houston.

2 Q. How long have you been so employed?

3 A. Approximately seven years.

4 Q. To what division are you currently assigned?

5 A. Currently assigned to the Homicide Division,  
6 Crime Scene Unit.

7 Q. And how long have you been with the Crime Scene  
8 Unit?

9 A. Two years.

10 Q. Were you assigned to the Crime Scene Unit back  
11 in September of 1998?

12 A. Yes, I was.

13 Q. Okay. And on September the 5th of 1998, did  
14 you have an occasion to go to a location in Harris  
15 County, Texas?

16 A. Yes, sir, I was dispatched to the location.

17 Q. Okay. You don't -- do you remember what  
18 location that was?

19 A. 3420 West Fuqua.

20 Q. How close is that, or is it, to Buffalo  
21 Speedway?

22 A. That, I don't recall.

23 Q. Right. And what did you find at the location  
24 that you arrived at?

25 A. There had been an incident, a shooting incident

52

1 Q. Did you participate in any follow-up  
2 investigation of this matter --

3 A. Not in this one, we didn't.

4 Q. -- other than talking with the District  
5 Attorney's Office yesterday?

6 A. Not in this case, we didn't.

7 MR. HILL: I'll pass the witness. Thank  
8 you.

9 MS. CONNORS: I have no further questions,  
10 Your Honor.

11 THE COURT: You may stand down. Any  
12 objection to this witness being excused?

13 MS. CONNORS: No, Your Honor.

14 THE COURT: You may be excused. Call your  
15 next.

16 MR. MCCLELLAN: State would call C.D.  
17 Duncan.

18 THE COURT: Proceed, please.

19 OFFICER CHRISTOPHER D. DUNCAN,  
20 having been first duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. MCCLELLAN:

23 Q. State your name for the record, please.

24 A. Officer Christopher D. Duncan.

25 Q. How are you employed?

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1 that caused the death of an individual.

2 Q. Okay. And did you go there then to process  
3 that scene and collect evidence?

4 A. Yes, sir, process the scene. That's my duties.

5 Q. Did you photograph the scene, as well as take a  
6 scene video at that location?

7 A. I sure did.

8 Q. During the examination of the scene area, did  
9 you find any type of paper or papers in the scene area?

10 A. Scattered about in the parking lot of this  
11 filling station was cut-up newspaper.

12 Q. About what size was the newspaper cut up?

13 A. It was cut up in the size of -- consistent with  
14 the size of a U.S. dollar bill.

15 Q. Okay.

16 MR. MCCLELLAN: May I approach the  
17 witness, Your Honor?

18 THE COURT: Yes.

19 Q. (BY MR. MCCLELLAN) Let me show you what's been  
20 marked for identification purposes as State's Exhibit  
21 No. 130 and ask you if you can identify that?

22 MR. MCCLELLAN: There is already a 130, so  
23 let me remark this exhibit.

24 Q. (BY MR. MCCLELLAN) And this is 131. And  
25 again, tender to you now 131 and ask you if you can

55

1 identify that?

2 A. Yes, I can.

3 Q. And is that paper that you recovered from what  
4 location?

5 A. That -- the bag is mine. The papers were  
6 recovered from the parking lot at 3420 West Fuqua.

7 Q. Okay.

8 MR. MCCLELLAN: At this time, Your Honor,  
9 the State would offer into evidence State's Exhibit 131  
10 and tender to defense counsel for examination.

11 MR. HILL: And Judge, we reurge the same  
12 objection that we did to the other evidence.

13 THE COURT: It's overruled. 131 is  
14 admitted.

15 Q. (BY MR. MCCLELLAN) And this paper, was it all  
16 in one location or several places?

17 A. It was all in the parking lot, but it was  
18 scattered about the -- disbursed through the parking  
19 lot.

20 Q. Okay. Was there any weapon found at the  
21 location?

22 A. No, sir, no weapons.

23 Q. During the processing of the scene, did you  
24 search the scene area to determine whether or not there  
25 was a spent shell casing?

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1 A. We searched extensively and were unable to find  
2 a fired shell casing.

3 Q. So there is no firearms evidence recovered at  
4 all from the scene?

5 A. No, sir.

6 Q. The scene area that you were at, to give the  
7 physical location, what type of business, if there was  
8 one, was located at that location?

9 A. It's a small auto repair garage.

10 Q. Okay. Did you recover other items of evidence,  
11 such as clothing and other things that were present at  
12 the scene at the time?

13 A. Yes, sir, I sure did.

14 Q. Let me show you what's been marked as State's  
15 Exhibit No. 120 and ask you if you can identify that?

16 A. Yes, sir, I can.

17 Q. And is this the scene video that you prepared  
18 on September the 5th, 1998?

19 A. It is a copy of my scene video, yes, sir.

20 Q. Okay.

21 MR. MCCLELLAN: At this time, Your Honor,  
22 the State would offer into evidence State's Exhibit No.  
23 120, tender to counsel.

24 MR. HILL: We reurge the same objection,  
25 Your Honor.

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1 THE COURT: It's overruled. State's 120  
2 is admitted.

3 MR. MCCLELLAN: We would ask to show the  
4 scene video at this time, Your Honor.  
5 (Video played.)

6 Q. (BY MR. MCCLELLAN) Officer, at the time that  
7 you arrived at the scene, was there any person that was  
8 still there that was injured?

9 A. No, sir.

10 Q. Now, State's Exhibit 131, the bag containing  
11 the paper clippings, was that submitted to the -- where  
12 was that submitted to?

13 A. That was submitted to our latent print  
14 examination lab.

15 Q. And have you reviewed the offense report since  
16 you made this scene back in December of 1998?

17 A. Only my written report.

18 MR. MCCLELLAN: At this time, Your Honor,  
19 then the State would pass the witness.

20 CROSS-EXAMINATION

21 BY MR. HILL:

22 Q. Officer Duncan, when you arrived there and you  
23 cordoned off the area -- or is the area already cordoned  
24 off with crime scene tape when you get there?

25 A. That is correct, patrol officer did it.

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1 Q. How many people are in the vicinity that are  
2 not law enforcement personnel?

3 A. I believe in the parking lot across the street  
4 there was a Hi Lo. I think there may have even been a  
5 club there, because there was a lot of vehicles over  
6 there.

7 Q. Did you see any civilians standing about being  
8 interviewed by either the patrol officer or any of the  
9 homicide detectives that arrived there?

10 A. You know, I didn't make a note of that, so I  
11 really don't recall.

12 Q. Do you recall which homicide detectives arrived  
13 there?

14 A. Let's see if I can review my notes real quick.

15 Q. Sure.

16 A. Investigators Hermann and Wright.

17 Q. And they're assigned to the homicide division,  
18 correct?

19 A. Yes, sir.

20 Q. And you work with those individuals on a fairly  
21 regular basis on different scenes that you arrive at?

22 A. I wouldn't call it regular, but I've been on  
23 scenes with them before.

24 Q. Okay. On that particular scene, though,  
25 they're the primary detectives in the case?



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1 A. It's a good way of -- yes.

2 Q. All right.

3 A. Good way of recognizing it.

4 Q. They're the ones that are going to be  
5 responsible for the investigation and to see -- follow  
6 up leads, things like that?

7 A. Exactly.

8 Q. And they would have been assigned that evening  
9 on September 5th of 1998?

10 A. Correct.

11 Q. And do you notice whether or not -- because  
12 isn't it typically that the two partners -- one will  
13 take care of the scene and the other will go to talk to  
14 witnesses and you have -- isn't that the way homicide  
15 guys usually do it?

16 A. Yes, sir.

17 Q. Do you recall which ones were going to speak to  
18 witnesses and which ones were working the scene with  
19 you?

20 A. No, sir.

21 Q. Did you have an occasion to do any follow-up  
22 work on this particular case other than coming into  
23 court here today and testifying?

24 A. No, sir, I read my report, submitted my  
25 evidence, and completed a diagram, a drawing, and that

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1 was it.

2 Q. And that would have all been done back in  
3 September of 1998?

4 A. Yes, sir.

5 Q. Now the plastic bag that's depicted in the  
6 crime scene photo -- rather, was that bag -- was a K-9  
7 Unit brought out to see whether or not they were going  
8 to alert on that bag to see if any drugs were in there?

9 A. No, sir.

10 Q. Thank you very much.

11 MR. HILL: I have no further questions.

12 MR. MCCLELLAN: Just one other thing, if I  
13 might.

14 REDIRECT EXAMINATION

15 BY MR. MCCLELLAN:

16 Q. Were there any drugs found at the location?

17 A. Not that I found, no, sir.

18 Q. Any money found at the location?

19 A. No, sir.

20 MR. MCCLELLAN: I have nothing further,  
21 Your Honor.

22 MR. HILL: Nothing more.

23 THE COURT: Call your next, please.

24 MR. MCCLELLAN: The State would call  
25 Joseph Melancon.

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1 JOSEPH MELANCON,

2 having been first duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. MCCLELLAN:

5 Q. State your name for the record, please.

6 A. Joseph Melancon.

7 Q. Mr. Melancon, how are you employed?

8 A. I work for State Farm Insurance.

9 Q. How long have you been so employed with them?

10 A. About a year now.

11 Q. And do you live here in Houston or somewhere  
12 else?

13 A. I live in Dallas.

14 Q. And how long have you lived in Dallas?

15 A. About a year and three months.

16 Q. Do you know a person by the name of Charles  
17 Mamou, Jr.?

18 A. Yes, I do.

19 Q. Do you see him here in the courtroom today?

20 A. Yes, I do.

21 Q. Could you point him out and briefly describe  
22 something he's wearing today?

23 A. Striped shirt.

24 Q. Would you point him out to the ladies and  
25 gentlemen of the jury?

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1 MR. MCCLELLAN: Your Honor, may the record  
2 reflect the witness has identified the defendant?

3 THE COURT: It will.

4 Q. (BY MR. MCCLELLAN) How did you come to know  
5 Charles Mamou, Jr.?

6 A. We went to school together.

7 Q. And where was that?

8 A. Sunset, Louisiana.

9 Q. Are you from Sunset, Louisiana?

10 A. Yes, I am.

11 Q. Went all the way through high school in Sunset?

12 A. Uh-huh.

13 Q. Was there a time that you then moved from  
14 Sunset and moved to another location?

15 A. Yes.

16 Q. All right. And where did you move to?

17 A. Houston, Texas.

18 Q. All right. And about when did you move to  
19 Houston, Texas? Do you recall what year you came here?

20 A. '97.

21 Q. Okay. And were you working here in Houston?

22 A. Yes, I was.

23 Q. Are you married, or are you single?

24 A. I'm married.

25 Q. Do you have any children?

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1 A. Two.

2 Q. And how old are your children?

3 A. I have an eighteen-month-year-old and a  
4 six-month-year-old (sic).

5 Q. Let me direct your attention back to September  
6 the 5th of 1998, which would have been a Saturday. Do  
7 you remember whether or not you had met with the  
8 defendant, Charles Mamou, Jr., on or about that day?

9 A. Yes, I do.

10 THE DEFENDANT: You're a goddamn liar.  
11 And let me tell you something. I did not kill Mary  
12 Carmouche. There is no evidence to convict me of  
13 something. Y'all didn't have no evidence, but y'all  
14 convicted me. Y'all think I'm Jeffrey Dahmer or  
15 somebody? Charge me with it. I'm tired of this  
16 goddamn shit, man.

17 (Off-the-record discussion.)

18 (Outside jury's presence:)

19 THE COURT: There was an outburst by the  
20 defendant, the jury was removed from the room. The  
21 defendant has been counseling with his attorneys in the  
22 back for a little while, and it's my understanding that  
23 the defendant's wish is not to be present in the  
24 courtroom for the remainder of the trial. Is that  
25 correct, Mr. Hill?

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1 MR. HILL: That is my understanding,  
2 although I strongly urged the client to stay throughout  
3 the remainder of the trial; but it is his express  
4 desire, and I'll ask him to explain it to you.

5 THE DEFENDANT: Yes, it is, Your Honor.

6 THE COURT: That's what you want to do?

7 THE DEFENDANT: Yes, it is.

8 THE COURT: They've already told you they  
9 think it's in your best interest to remain in the  
10 courtroom?

11 THE DEFENDANT: Yes, it is.

12 THE COURT: If you were in the courtroom,  
13 would you be able to control yourself?

14 THE DEFENDANT: Not at this point, Your  
15 Honor.

16 THE COURT: So you're asking me to allow  
17 you to voluntarily absent yourself from the remainder of  
18 this proceeding; is that correct?

19 THE DEFENDANT: Yes, I am.

20 THE COURT: All right. Anything else you  
21 want on the record?

22 MR. HILL: Just that if he wants to  
23 reenter the courtroom so that he can continue to  
24 participate in the trial, he needs to let us know that  
25 immediately so we can have him brought in with the

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1 understanding that he would then have to not make any  
2 other outbursts unless he were to testify in his own  
3 defense, at which time he would be allowed to offer any  
4 evidence that he would like to.

5 THE COURT: All right. Is there anybody  
6 else in the holdover right now?

7 And all I am going to tell the jury,  
8 Mr. Hill, is that the defendant has voluntarily absented  
9 himself from this proceeding.

10 MR. HILL: From the courtroom. We don't  
11 want to suggest that he voluntarily escaped or anything.

12 MR. MCCLELLAN: I think he elected not to  
13 be present.

14 MR. HILL: Not to be present in the  
15 courtroom during the rest of his testimony.

16 (Off-the-record discussion.)

17 (Jury is brought in and seated.)

18 THE COURT: Ladies and gentlemen, the  
19 defendant has elected not to be present in the courtroom  
20 at this time. The defendant, Mr. Charles Mamou, Jr.,  
21 has elected not to be present in the courtroom.

22 Proceed, please.

23 Q. (BY MR. MCCLELLAN) Mr. Melancon, I think we  
24 were talking about Saturday, September the 5th, 1998,  
25 whether or not you had an occasion to meet with Charles

66

1 Mamou, Jr., on that day? You need to answer yes or no.

2 A. Yes, I did.

3 Q. And had you been in contact with Mr. Mamou  
4 prior to that Saturday?

5 A. I spoke to him on Thursday.

6 Q. Now, where was the defendant, Charles Mamou,  
7 living at the time, if you know?

8 A. I don't know.

9 Q. Was he living in Houston, though?

10 A. I don't know.

11 Q. How long prior to that Thursday had it been  
12 since you had heard from him?

13 A. I don't understand.

14 Q. Thursday you say he calls you up, right?  
15 Before that Thursday, how long was it before you had  
16 talked to him? Days, weeks, months?

17 A. Months.

18 Q. All right. And on this Thursday was he in  
19 Houston, or do you know?

20 A. Yes.

21 Q. Did y'all make arrangements then to get  
22 together on Saturday?

23 A. Yes.

24 Q. Why were you going to get together on Saturday?

25 A. It was the Prairie View and Texas Southern

67

1 game, and we was going to go out.

2 Q. Did you then meet up with the defendant,  
3 Charles Mamou, on that Saturday evening?

4 A. Yes.

5 Q. And where did -- where did you meet him at?

6 A. At my house.

7 Q. What part of town did you live in?

8 A. Southwest side.

9 Q. When he came over to your house, how did he get  
10 to your house? Do you know?

11 A. In like a brown Blazer.

12 Q. Brown Blazer?

13 A. Like a Durango, something like that.

14 Q. I didn't understand that.

15 A. Chevrolet Durango, one of the little small  
16 Blazers.

17 Q. And was he by himself or with someone?

18 A. By himself.

19 Q. And did y'all end up then going out that  
20 evening?

21 A. Yes.

22 Q. About what time, if you know, did you leave?

23 A. 8:30, 9:00, 9:30, something. Maybe 9:30,  
24 10:00.

25 Q. All right. And where were you going to go when

68

1 you left?

2 A. We was going to Jamaica. It's a club.

3 Q. And where is that club located? Do you know  
4 what street?

5 A. On the south side. I don't know. I don't  
6 remember.

7 Q. Did you get to the Jamaica Club?

8 A. No, we didn't.

9 Q. What happened on the way to Jamaica Club that  
10 prevented you from getting there?

11 A. Chucky got a phone call on his cell phone.

12 Q. And do you know who he was talking to?

13 A. No, I don't.

14 Q. You just heard his end of the conversation?

15 A. Yeah.

16 Q. What was he saying in the cell phone?

17 A. He said, You got that for me.

18 Q. I'm sorry. I want you to back up a little bit  
19 from the microphone.

20 A. Do you have that for me?

21 Q. What did he say next, if you recall?

22 A. He hung up.

23 Q. All right. Where did you end up going?

24 A. To the little store on Buffalo and West Fuqua.

25 Q. Buffalo, meaning Buffalo Speedway?

69

1 A. Yes.

2 Q. Now, how many people were in the vehicle you  
3 were in?

4 A. Just me and Chucky.

5 Q. When you got to the store at Fuqua and Buffalo  
6 Speedway, what kind of store was it, do you know?

7 A. It was like a convenience store.

8 Q. And was there anything close by the convenience  
9 store?

10 A. It was a club. It was called Shannon's.

11 Q. Not the club you were initially going to --

12 A. No.

13 Q. -- but a different club. What happened when  
14 you arrived at the convenience store?

15 A. They had three guys standing out at the  
16 convenience store.

17 Q. Okay. Did y'all park, or what did you do?

18 A. We pulled up. And one of the guys came to the  
19 car's front passenger door, and I got out and they got  
20 in.

21 Q. Did you know who that person was?

22 A. Yes, I did.

23 Q. And how did you know who -- what did you know  
24 that person's name to be?

25 A. Bruiser.

70

1 Q. Did you know him by any other name?

2 A. No, I didn't.

3 Q. All right.

4 MR. MCCLELLAN: May I approach the  
5 witness, Your Honor?

6 THE COURT: Yes.

7 Q. (BY MR. MCCLELLAN) Let me show you what's been  
8 marked for identification purposes as State's Exhibit  
9 122 and ask you if you recognize that person?

10 A. Yes, I do.

11 Q. And is that the person you saw that you know as  
12 Bruiser?

13 A. Yes, it is.

14 MR. MCCLELLAN: At this time, Your Honor,  
15 the State would offer into evidence State's Exhibit 122  
16 and tender to defense counsel for his examination.

17 MR. HILL: We reurge all the objections we  
18 made outside the presence of the jury.

19 THE COURT: It's overruled. State's 122  
20 is admitted.

21 Q. (BY MR. MCCLELLAN) Let me show you what's  
22 already been admitted into evidence as State's Exhibit  
23 No. 128. Is that the same person, also?

24 A. Uh-huh.

25 MR. MCCLELLAN: At this time, Your Honor,

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1 State would offer into evidence State's Exhibit 128,  
2 tender to defense counsel for examination.

3 MR. HILL: Reurge the same objection, Your  
4 Honor.

5 THE COURT: It's overruled. State's  
6 Exhibit 128 is admitted.

7 Q. (BY MR. MCCLELLAN) And this is the person you  
8 knew as Bruiser?

9 A. Yes.

10 Q. How long had you known Bruiser?

11 A. For about seven months.

12 Q. I don't recall whether I asked you or not. How  
13 old are you?

14 A. I'm twenty-two.

15 Q. Was Bruiser older or younger than you, if you  
16 know?

17 A. Older.

18 Q. And what did you say the person you've  
19 identified as Bruiser did when he came to your side of  
20 the vehicle you were in?

21 A. He opened my door.

22 Q. Okay. And did you get out or did you stay in?

23 A. I got out.

24 Q. Where did you go?

25 A. I went and talked to the two guys that was

72

1 standing up with him.

2 Q. And who were the two guys?

3 A. A guy named Lonnie and Wiener Man.

4 Q. What did Bruiser do after you got out of the  
5 vehicle?

6 A. Him and Chucky was in the vehicle talking.

7 Q. All right. So did Bruiser get in the vehicle?

8 A. Yes.

9 Q. What did you see the defendant, Charles Mamou,  
10 do then, the next thing you saw him do?

11 A. He got out of the vehicle and went into the  
12 store.

13 Q. Did you see him come out of the store with  
14 anything?

15 A. Yes.

16 Q. What did he come out of the store with?

17 A. Two brown bags. Looked like something to drink  
18 was in them.

19 Q. All right. What did he do after he came out of  
20 the store? Where did he go and what did he do?

21 A. He got in the driver's seat and drove off.

22 Q. All right. Did he say anything to you before  
23 he drove off?

24 A. No.

25 Q. All right. Now the plan had been y'all were

73

1 going to go to Jamaica Club, right?

2 A. Correct.

3 Q. Did the defendant say anything about why you  
4 weren't immediately going to Jamaica Club? Did he say  
5 what he was going to do first?

6 A. He said he needed to take care of something.

7 Q. All right. When he drove off, did you expect  
8 him to come back?

9 A. Yes.

10 Q. What were you doing then after you saw the  
11 defendant and the person you identified as Bruiser drive  
12 off in a vehicle driven by the defendant? What were  
13 you doing?

14 A. I was talking to Lonnie and another guy named  
15 Wiener Man.

16 Q. And while you were outside the store talking,  
17 did you hear anything unusual?

18 A. Yes.

19 Q. What did you hear?

20 A. Sounded like a gunshot.

21 Q. One or more?

22 A. One.

23 Q. After you heard what sounded like a gunshot,  
24 did someone come to the location where you were at?

25 A. Yes.

74

1 Q. Do you know who this person was?

2 A. No.

3 Q. Without telling me what they said, did they say  
4 something?

5 A. Yes.

6 Q. As a result of what they said, what did you do,  
7 if anything?

8 A. I got in the car with Lonnie, and we rode over  
9 on West Fuqua by the entrance to the Almeda Manor  
10 neighborhood, the entrance to that subdivision.

11 Q. What was there at that location?

12 A. It was a lot of people around, and Bruiser was  
13 laying on the ground.

14 Q. Now did you get out of the vehicle?

15 A. Yes, I did.

16 Q. Did you go up to where Bruiser was?

17 A. Yes, I did.

18 Q. Did you hear anything Bruiser was saying?

19 A. Yes, I did.

20 Q. What was he saying?

21 MR. HILL: Judge, we'd object to hearsay.

22 THE COURT: It's overruled.

23 Q. (BY MR. MCCLELLAN) What did you hear him say?

24 A. He said, My boys shot me, and he just kept  
25 saying it over and over.



75

1 Q. Repeating that same phrase? You need to say  
2 yes or no.

3 A. Yes.

4 Q. She cannot take down nods, so you have to  
5 answer yes or no.

6 A. Okay.

7 Q. After you saw Bruiser laying there, what did  
8 you do?

9 A. I walked over about two houses down with  
10 another friend of mine from the neighborhood, and I used  
11 his phone.

12 Q. Okay. And who did you call?

13 A. I called my wife.

14 Q. What did you ask her to do, if anything?

15 A. I told her to come get me.

16 Q. And did she?

17 A. Yes, sir.

18 Q. Before you left that scene, did any ambulance  
19 or people arrive to tend to Bruiser?

20 A. Yes.

21 Q. After your wife came and picked you up to take  
22 you home, when is the next time you heard from the  
23 defendant, Charles Mamou?

24 A. The next morning.

25 Q. Okay. And how did you hear from him?

77

1 Q. And how old was the child?

2 A. It was about seven months.

3 Q. After that -- this was, you say, the next day  
4 that you received a call from the defendant?

5 A. It was a Sunday.

6 Q. Sunday, okay. After that day, did you spend  
7 the night anymore at that apartment?

8 A. No, I didn't.

9 Q. Where did you go?

10 A. I went to my auntie's house. She lives in  
11 South Park.

12 Q. Did you ever spend the night in that apartment  
13 again?

14 A. After that day?

15 Q. Yes.

16 A. No.

17 Q. After staying at your auntie's house, did you  
18 continue to live in Houston?

19 A. No, I didn't.

20 Q. Where did you go?

21 A. I moved to Dallas, Texas.

22 Q. Have you been in Dallas, Texas, ever since?

23 A. Yes, I have.

24 Q. And you say you're from Sunset, Louisiana?

25 A. Yes, I am.

76

1 A. He called me.

2 Q. What did he say?

3 A. He asked me what was up.

4 Q. And what was your response?

5 A. I asked him, what you mean, what's up?

6 Q. Did you tell him anything else or say anything  
7 else?

8 A. I asked him what happened between him and his  
9 boy last night.

10 Q. Did he respond?

11 A. Not at first.

12 Q. What else did you say?

13 A. I asked him again what happened between him and  
14 his boy last night. And he said some bullshit.

15 Q. Okay. Now after that conversation with the  
16 defendant, did you ever hear from him again?

17 A. No, I didn't.

18 Q. Did you ever see him again?

19 A. Not before today.

20 Q. Now, you were living in an apartment or a  
21 house?

22 A. Apartment.

23 Q. With your wife, and how many children did you  
24 have then?

25 A. One.

78

1 Q. After this event on September the 5th, 1998,  
2 did you ever go back to Sunset, Louisiana?

3 A. Not right off.

4 Q. Okay. When was -- what events, if any,  
5 precipitated you going back to Sunset, Louisiana?

6 A. When Chucky Mamou had got arrested for -- I  
7 didn't know what for, but he had got arrested.

8 Q. Okay.

9 A. I found out later that it was for multiple  
10 murders.

11 Q. Now why did you not stay in your apartment  
12 after having that conversation with Charles Mamou on  
13 that Sunday morning?

14 A. I didn't feel safe in the apartment.

15 Q. Okay. Now after this event happened, how many  
16 days was it before, or weeks -- tell me what time frame  
17 we're talking about before you moved to Dallas?

18 A. About a week.

19 Q. Prior to moving to Dallas, had you been  
20 contacted by -- or did you contact anybody with the  
21 Houston Police Department prior to going to Dallas?

22 A. No, I didn't.

23 Q. After -- while you were in Dallas, did you  
24 contact the Houston Police Department, or did someone  
25 from the Houston Police Department contact you?

79

1 A. I contacted someone.

2 Q. And do you know who you contacted?

3 A. Sergeant Herman.

4 Q. Did you ever talk to Sergeant Herman in person?

5 A. No, I didn't.

6 Q. Just on the telephone?

7 A. Yes.

8 Q. How many on the telephone?

9 A. I talked to him once.

10 Q. Did Sergeant Herman or anyone ever contact you  
11 again -- well, not anyone -- but did Sergeant Herman  
12 ever contact you again after that initial telephone  
13 conversation?

14 A. No, he didn't.

15 Q. When is the next time that you were contacted  
16 by someone from the Houston Police Department regarding  
17 this case?

18 A. About two weeks ago.

19 Q. And who contacted you, if you recall?

20 A. I don't recall.

21 Q. Have you seen the person here today who  
22 contacted you or came to see you?

23 A. Yes.

24 Q. And did -- was there one or two people that  
25 came to see you?

80

1 A. Two people.

2 Q. And when they came to see you then, did you  
3 give them a taped statement concerning what you knew  
4 about this incident?

5 A. Yes, I did.

6 MR. MCCLELLAN: I'll pass the witness,  
7 Your Honor.

8 CROSS-EXAMINATION

9 BY MR. HILL:

10 Q. Mr. Melancon, my name is Wayne Hill. You and I  
11 have never met before, correct?

12 A. Correct.

13 Q. We've not spoken on the phone at all?

14 A. No, we haven't.

15 Q. I'd like to take you back a little bit and fill  
16 in some of the gaps, if you would. How long -- how many  
17 years is it that you say you've known Charles Mamou,  
18 Jr.?

19 A. About twelve or thirteen years.

20 Q. Now, are you originally from Sunset or from  
21 Belvieu?

22 A. Originally from Belvieu.

23 Q. When did you move to Sunset?

24 A. Sunset and Belvieu is like --

25 Q. Neighboring towns?

81

1 A. Yeah.

2 Q. Now you actually went to high school with the  
3 defendant's brother, Christopher, didn't you?

4 A. Yes, I did.

5 Q. So when you're telling the members of the jury  
6 that you knew the defendant, you knew of him through his  
7 brother, Chris, right?

8 A. No, I know the defendant.

9 Q. Okay. You feel like you knew Charles pretty  
10 well?

11 A. I knew him well.

12 Q. Maybe twelve or thirteen years? How old is  
13 Charles now, roughly, if you don't know exactly?

14 A. About twenty-six, twenty-five.

15 Q. So you've known him since he was around twelve  
16 or thirteen years told, right?

17 A. No, I wouldn't say that.

18 Q. All right. You've known him since he was  
19 thirteen or fourteen years old?

20 A. Yeah.

21 Q. During that period of time, did you go to the  
22 same school together?

23 A. Elementary school.

24 Q. All right. And while you were in elementary  
25 school, did you ever play together, like sports

82

1 together, anything like that?

2 A. Me and his brother. He was above me.

3 Q. Who was above you?

4 A. Him.

5 Q. Charles or Christopher?

6 A. Charles.

7 Q. Okay. How much older is Charles than you?

8 A. About four years, three or four years.

9 Q. During the time that you knew him when you were  
10 in elementary school, did you also know when he was in  
11 high school, Charles?

12 A. He was out of high school when I was coming in.

13 Q. So did you ever spend any time over at that  
14 Mamou household?

15 A. His grandmother.

16 Q. His grandmother is the one that raised him?

17 A. What I know of.

18 Q. You have to answer so she can take it down,  
19 okay? Where is it exactly that Charles lived in Sunset,  
20 Louisiana? Do you remember the name of the street he  
21 lived on?

22 A. No, not really. I think it's Belvieu Street.

23 Q. How many other children lived with him and his  
24 grandmother?

25 A. I don't know. A lot.

83

1 Q. Did he have a large family?

2 A. Yeah.

3 Q. There were about six kids in the family?

4 A. I don't know.

5 Q. You know the names of any of the other family  
6 members?

7 A. Uh-huh, yes, I do.

8 Q. What would those names be?

9 A. Chitibu (phonetically), Chris, that's about  
10 all. He has some sisters, but I don't know their names  
11 right off.

12 Q. All right. And do you know where Charles'  
13 mother lived when Charles was living with his  
14 grandmother?

15 A. No.

16 Q. Did you ever see Charles' father when Charles  
17 was in -- he was a young boy growing up, around  
18 thirteen, fourteen years old?

19 A. I met his father before.

20 Q. Is that in Sunset or here in Houston?

21 A. Sunset.

22 Q. Do you know whether or not his father was  
23 actually living in the home at the time?

24 A. No, I don't.

25 Q. Do you know what type of sports Charles Mamou

85

1 months old back in September of '98, correct, about  
2 thirteen months ago?

3 A. He was born in March, so March to September.

4 Q. So about five to six months old. And I believe  
5 you said on Thursday you received a call from Charles  
6 Mamou?

7 A. Yeah.

8 Q. And that had been the first time you'd spoken  
9 to him in months?

10 A. Yeah.

11 Q. What did you do the last time you got together  
12 with Charles prior to the Thursday, which would have  
13 been September 3rd? What would y'all do when you got  
14 together?

15 A. We will go out, have fun.

16 Q. Like what? What would you do? Go clubbing?

17 A. Yeah, go clubbing.

18 Q. Do you have any special clubs that you still  
19 like to go to?

20 A. No. Mostly it was when we was in Sunset  
21 together, we went clubbing.

22 Q. So you would drive over to Sunset?

23 A. No, that's when I was living in Sunset.

24 Q. So when is the last time you lived in Sunset?

25 A. Prior to what? Prior to moving to Houston or

84

1 played when he was in high school?

2 A. Yes, I do.

3 Q. What did he play?

4 A. Basketball.

5 Q. Played on a school team?

6 A. Yes, he did.

7 Q. Did he play football or any other sports that  
8 you're aware of?

9 A. No.

10 Q. Track and field?

11 A. Not that I'm aware of.

12 Q. Do you know how far he went in high school?

13 A. I think he graduated.

14 Q. Do you know whether or not he went to college  
15 at all?

16 A. No, I don't.

17 Q. Well, were you close enough to Charles Mamou  
18 and his brother, Chris, to know what kind of family life  
19 he had?

20 A. No.

21 Q. Now your child that was born at the time that  
22 we're talking about, back in September of '98, that  
23 child is eighteen months old now?

24 A. Yes.

25 Q. So it actually would have been about five

86

1 from now?

2 Q. No, no. Prior to moving to Houston, when did  
3 you live in Sunset last? In other words, when did you  
4 move from Sunset to Houston?

5 A. By '97.

6 Q. Between '97 --

7 A. Uh-huh.

8 Q. -- and September 3rd of 1998, would you see  
9 Charles a lot?

10 A. No.

11 Q. Okay. Would you ever get together with him in  
12 between those time periods?

13 A. Just when I went home to visit.

14 Q. When you would go home to visit, where was he  
15 living at the time?

16 A. I would see him in Sunset.

17 Q. Did he live on Martin Luther King Street?

18 A. I don't know.

19 Q. You don't recall the name of the street. You  
20 know Timmy Thomas?

21 A. Yes, I do.

22 Q. Where does Timmy live?

23 A. He lives on, I think, Martin Luther King. I'm  
24 not sure.

25 Q. What color is his house?

87

1 A. I forgot.

2 Q. Does he live right down the street from where  
3 Charles' mother lives?

4 A. Yes.

5 Q. All right. So if it's on the same street, then  
6 do you recall now that Charles lived on Martin Luther  
7 King?

8 A. Martin Luther King, yes.

9 Q. Describe the house for us that he lived in  
10 there. What does the house look like?

11 A. Charles' house?

12 Q. Yeah.

13 A. Small, like off-beige color.

14 Q. What's the inside look like? Pretty spacious?

15 A. Never did look on the inside.

16 Q. What's the outside look like, the porch and  
17 stuff?

18 A. Lot of big trees in the front, a club right  
19 across the street, big -- not too big porch, but not too  
20 small, enough where a couple of guys could --

21 Q. Enough for two chairs to be --

22 A. Yeah.

23 Q. Kind of slants down to the side?

24 A. Maybe, now, I don't recall.

25 Q. Is it a pretty poor area of town?

89

1 don't know where he is at the time; you don't know if  
2 he's calling from Sunset or not?

3 A. No, I know where he was.

4 Q. Where was he at the time he was calling?

5 A. He was in Houston.

6 Q. Do you know where he was staying?

7 A. He said with a friend.

8 Q. Girlfriend? Boyfriend?

9 A. Girl.

10 Q. And what was special about the Prairie View/  
11 T.S.U. game? You guys weren't going to go to the game,  
12 right?

13 A. No, we just was going to go out after.

14 Q. What kind of work were you doing at Sam's at  
15 the time?

16 A. I worked in the freezer/cooler area.

17 Q. Like, stocking things?

18 A. Yeah.

19 Q. Your wife also worked there, right?

20 A. Yes.

21 Q. And so, when he called you, you didn't actually  
22 see him on Thursday; you just spoke on the phone?

23 A. No, I spoke to him and another friend of mine  
24 that was with him.

25 Q. Who was your friend that was with him?

88

1 A. You could say.

2 Q. Okay.

3 A. It's really no rich area of town in Sunset.

4 Q. It's kind of a small little sleepy town in  
5 Louisiana?

6 A. Right.

7 Q. Is that why you moved from there?

8 A. Yeah.

9 Q. To get away and get to a bigger environment?

10 A. Correct.

11 Q. So prior to September 3rd, which is a Thursday,  
12 you really don't -- you don't really have any contact  
13 with Charles other than when you go back to Louisiana to  
14 visit family?

15 A. Right.

16 Q. Okay. So -- and when Mr. McClellan was asking  
17 you the last time you had had contact with him, you said  
18 it had been months before. That would have been only  
19 because of going back to Sunset?

20 A. Right.

21 Q. Did you ever go -- on the 3rd, which is that  
22 Thursday, did you ever go with Charles to his dad's  
23 place over on Yellowstone?

24 A. No.

25 Q. So Charles just basically called you, and you

90

1 A. A guy named T.D.

2 Q. Okay. This was the guy that -- I didn't quite  
3 understand what his full name was. T.D., as in D, like  
4 in dog?

5 A. Like an abbreviation.

6 Q. But what is his actual name? What is T.D.'s  
7 full name?

8 A. I always knew him as T.D. Sashawn  
9 (phonetically).

10 Q. Does he live here in Houston?

11 A. No.

12 Q. Where does he live?

13 A. Sunset.

14 Q. So you speak to him. He's with T.D. Sashawn?

15 A. Uh-huh.

16 Q. And the idea is to get together on Saturday?

17 A. Right. Well, actually they wanted to get  
18 together then, but I had to go to work.

19 Q. Okay.

20 A. And the next day I was off for Saturday.

21 Q. And how is it that -- does he call you on the  
22 phone? Do you call him on the phone?

23 A. He called me.

24 Q. And says, let's get together?

25 A. Yeah.



91

1 Q. And the subject of the Prairie View/T.S.U. game  
2 came up in the context that there would probably be a  
3 lot of people out at clubs that night?

4 A. Right.

5 Q. So y'all could go pick up some chicks?

6 A. No, not pick up no chicks.

7 Q. No?

8 A. No.

9 Q. Just going to go clubbing, him and you and your  
10 friend, Mr. Sashawn?

11 A. No. Just when he called me Saturday, T.D. went  
12 to Austin. So it was just going to be me and him.

13 Q. Okay. Your wife was not going to be  
14 accompanying you, correct?

15 A. Correct.

16 Q. So when he comes over to your house to pick you  
17 up, what does he do?

18 A. He came over and asked me to use the phone. I  
19 let him use the phone.

20 Q. Uh-huh.

21 A. He was on the phone with his -- I think he  
22 talked to his little girl, one of his kids back home.

23 Q. Okay. Who would the little girl be? I mean,  
24 that's a woman that had one of his children?

25 A. Right.

93

1 Q. He introduced you to them?

2 A. No.

3 Q. Now when he comes over on that Saturday, you  
4 said he came over at either 8:30 to 9:00 or 9:30 to  
5 10:00?

6 A. Correct.

7 Q. You don't recall which. But do you recall at  
8 the time he came over your wife was not home?

9 A. That's correct.

10 Q. Your wife was working until what time that  
11 night?

12 A. I think she got off at 9:30 or 10:00.

13 Q. Okay. As Charles is there in your house, he's  
14 playing with your little five-year-old?

15 A. Five-year-old?

16 Q. I'm sorry, five-month-old?

17 A. Right.

18 Q. What type of things is he doing?

19 A. Nothing, just playing with him.

20 Q. Okay. And you were okay with that? You were  
21 cool with that?

22 A. Yeah.

23 Q. At some point, do you guys leave?

24 A. Right.

25 Q. Does your wife come home?

92

1 Q. Do you know her name?

2 A. No.

3 Q. That brings up an interesting point. Do you  
4 know how many children Charles has?

5 A. No, I don't.

6 Q. Do you know he has more than one?

7 A. Yes, I do.

8 Q. Have you ever met any of them?

9 A. Yes, I have.

10 Q. You met them when you were out in Sunset?

11 A. Yes.

12 Q. How many of the children have you met?

13 A. One.

14 Q. Was that a boy or a girl?

15 A. A girl.

16 Q. And where did you meet her?

17 A. In the Sunset Project.

18 Q. Okay. That's a housing project?

19 A. In Sunset.

20 Q. On the other side of Martin Luther King?

21 A. Correct.

22 Q. Tell us a little bit about the interaction that  
23 you saw between Charles and his child.

24 A. I didn't see him with the child. I saw the  
25 mama and the child.

94

1 A. No, I had to bring her the car. We only had  
2 one car at the time.

3 Q. Okay. So did you take the five-month-old with  
4 you over to where your wife was working?

5 A. Right.

6 Q. So you drive the car over, and you leave your  
7 child with your wife. And then you and Charles were  
8 going to probably go clubbing at that point?

9 A. Right.

10 Q. Now this area of Buffalo Speedway and Fuqua,  
11 whereabouts is that? I know you said Southwest  
12 Houston. But give us a little better idea of where that  
13 is in relation, you know, to the 610 Loop, the Gulf  
14 Freeway.

15 A. I don't even remember the highways anymore.  
16 Say from the tollway, it's not that far from the  
17 tollway.

18 Q. You're talking about the Sam Houston Tollway?

19 A. Yeah.

20 Q. Runs all around the city. And you're talking  
21 about the part that's in the southern part of the city?

22 A. Right.

23 Q. The part that crosses over I-45, the Gulf  
24 Freeway, which goes north and south to Galveston?

25 A. Yeah, it's not far from I-45.

95

1 Q. Okay. How long have you been knowing Bruiser,  
2 seven months?

3 A. Yeah.

4 Q. How did you meet him?

5 A. He's friends with my cousins. He was friends  
6 with my cousin.

7 Q. How did he get the nickname, Bruiser?

8 A. I don't know. I met him as Bruiser.

9 Q. How big a guy is he?

10 A. He's pretty big.

11 Q. Give me your best estimate.

12 A. Maybe about 235, over six feet; but he was --  
13 we used to play basketball together a lot.

14 Q. Where would you play?

15 A. I would meet him at a neighborhood, at a middle  
16 school called Peeks (phonetically).

17 Q. What street is that near?

18 A. West Fuqua.

19 Q. That's near the area where we're talking about?

20 A. Yes.

21 Q. Now you say that at some point you pull up to a  
22 convenience store and there are three guys outside.

23 What is Lonnie's full name?

24 A. I don't know.

25 Q. How do you know this guy, Wiener Man? Does he

97

1 left with Bruiser and now he's not here?

2 A. No.

3 Q. Okay. And it's clear in your mind -- your  
4 testimony under oath is that the last person that you  
5 see with Bruiser is Charles Mamou?

6 A. Correct.

7 Q. And you don't see where they go to, correct?

8 A. Correct.

9 Q. They drive off in this vehicle you describe as  
10 a Blazer, or a Durango, some kind of sports utility  
11 vehicle, and Chucky is driving?

12 A. Yes.

13 Q. Now, how far is it from where you saw them at  
14 the convenience store to where you ultimately see  
15 Bruiser's body? We're talking somewhere within a half  
16 a mile?

17 A. Yes.

18 Q. You had to drive there. You go down West Fuqua  
19 or Buffalo Speedway? Which road do you travel?

20 A. West Fuqua.

21 Q. How long after you saw Bruiser and Mr. Mamou  
22 drive off did you hear what you thought might have been  
23 a gunshot?

24 A. Maybe four to five minutes.

25 Q. And who are you talking to at the time that

96

1 work selling hot dogs or something?

2 A. No. Wiener Man is friends with my cousin.  
3 They grew up in Houston. And he would be at the cleaner  
4 store where I went to do my cleaning at.

5 Q. So you knew how to get in touch with Wiener Man  
6 or Lonnie? These were not people that were strangers to  
7 you?

8 A. I didn't know how to get in touch with them,  
9 but I knew them.

10 Q. And you would know how to be able to put people  
11 in touch with them? You just said you --

12 A. No, he would be at a cleaners. He would be at  
13 a cleaners where I got my cleaning done.

14 Q. Did Lonnie and Wiener Man stick around with you  
15 for the police to get there that night?

16 A. I was with them when the police and the  
17 paramedics got there.

18 Q. And you offered information to them and gave  
19 them your name?

20 A. No.

21 Q. Police ask you what your name was?

22 A. No.

23 Q. Were you just a total -- you were just a total  
24 mystery to everybody? Did you come forward and say,  
25 hey, I know this guy, Chucky; and coincidentally, he

98

1 that happens?

2 A. Lonnie and Wiener Man.

3 Q. You said that a person came to your location  
4 while you were talking to Lonnie and Wiener Man, all  
5 right?

6 A. Correct.

7 Q. But that's not somebody you know?

8 A. No.

9 Q. What is the description of that person?

10 A. I don't even remember.

11 Q. Well, was it a white male, black male?

12 A. Black male.

13 Q. Approximately how tall?

14 A. Five-eight, five-nine.

15 Q. About how much weight?

16 A. Maybe 210, 205.

17 Q. Did he come running up to you?

18 A. Yes.

19 Q. Was there anybody with him?

20 A. With him? No.

21 Q. Did he come running in the direction or from  
22 the direction where you ultimately went and found  
23 Bruiser's body?

24 A. I don't remember. I didn't see it.

25 Q. When you went to the scene, how did you get

99

1 from the convenience store to where Bruiser was?

2 A. I rode with Lonnie.

3 Q. Okay. So Lonnie had his vehicle there?

4 A. Correct.

5 Q. And did Wiener Man get in the car with you?

6 A. No.

7 Q. Who else, if anybody, got in the vehicle?

8 A. Nobody.

9 Q. When you drive there and you see Bruiser, do  
10 you look around to see if there is anybody else there?

11 A. There is a lot of people there.

12 Q. Where were they standing?

13 A. Around Bruiser.

14 Q. Okay. So if it's four or five minutes between  
15 the time you left and heard a gunshot, how long is it  
16 from that point until you're actually there by Bruiser?  
17 How long did it take you to get over there?

18 A. Some seconds.

19 Q. I mean, it's a very short period of time,  
20 whatever it takes you to drive a half mile?

21 A. Not even a half mile.

22 Q. Very short period of time. There is people  
23 standing around. I take it that there are no paramedics  
24 there yet?

25 A. Not yet.

100

1 Q. You go over to Bruiser, and that's when you  
2 have this statement and you ask him what has happened.  
3 And he makes these comments to you about his boy, right?

4 A. I never asked him nothing.

5 Q. Okay. At that point, whose house do you go to?  
6 You said you went to a friend's house that was two  
7 houses away.

8 A. Guy named Tracy.

9 Q. Tracy who?

10 A. I don't know his last name.

11 Q. How long have you been knowing Tracy?

12 A. He just lives in the neighborhood where my  
13 cousins stay.

14 Q. Which cousins are we talking about?

15 A. I have a cousin named Joe Malbrough and a  
16 cousin named Chris Malbrough.

17 Q. And the first person you called is your wife?

18 A. Correct.

19 Q. What do you tell her?

20 A. I told her to come pick me up.

21 Q. Okay. You don't call the police at that point  
22 and say -- or 911?

23 A. No, I don't.

24 Q. Now, you go to your auntie's house in South  
25 Park, right?

101

1 A. Right.

2 Q. All right. Now when your wife comes to pick  
3 you up, where do you all go right from there?

4 A. Home.

5 Q. And what do you do when you get to home?

6 A. Nothing. I just -- I told her what happened.

7 Q. And after telling her what happened, did you  
8 spend the night there?

9 A. Yes.

10 Q. How many days did it take for you to pack up  
11 your belongings and move from that location?

12 A. Well, first I just took a few clothes, like a  
13 suitcase, whatever we was going to need.

14 Q. All right. Now did your wife and child  
15 accompany you?

16 A. Yes.

17 Q. So at that point, did you and your wife both  
18 just up and quit your jobs?

19 A. Yes.

20 Q. Were you planning on moving to Dallas anyway?

21 A. Eventually.

22 Q. You had some job prospects up there, right?

23 A. Yes.

24 Q. It wasn't State Farm Insurance you went up  
25 there to work for?

102

1 A. No, not right off.

2 Q. You were going to go be a truck driver up  
3 there, a long distance truck driver?

4 A. No.

5 Q. What type of work were you going to do up in  
6 Dallas?

7 A. Work for Home Depot.

8 Q. Okay. Now what type of work do you actually do  
9 for State Farm?

10 A. I'm a claims adjustor.

11 Q. All right. Now it's your testimony that the  
12 first time you're telling anybody or making a statement  
13 about this, I believe, was October 4th of 1999, right?  
14 Couple of weeks ago?

15 A. No. I made an informal statement on the  
16 telephone about two weeks after it happened.

17 Q. Who did you talk to informally on the  
18 telephone?

19 A. Sergeant Herman.

20 Q. And at that time, did you call and say, by the  
21 way, my name is Joseph Melancon, and I've got  
22 information about a case that happened on September 5th  
23 of 1998?

24 A. I received his phone number from another  
25 officer --

103

1 Q. Okay.

2 A. -- who is a cousin of mine. And he let me know  
3 who was working on the case.

4 Q. Okay. Because you want to share that  
5 information so they would be able to investigate it  
6 completely, right?

7 A. Yes.

8 Q. Now you're not telling the members of this jury  
9 that you saw Mr. Mamou shoot anybody, right?

10 A. No.

11 Q. And there wasn't anybody that came up to you  
12 and said that -- or when you're there and you go up to  
13 Bruiser, he doesn't say anything to you?

14 A. He just was saying, My boy shot me.

15 Q. And you don't know who he meant when he said,  
16 My boy shot me?

17 A. No.

18 Q. When you talked to Sergeant Herman from Houston  
19 Homicide Department, do you tell him basically what  
20 you've told us here today?

21 A. Yes.

22 Q. And did you also tell him there was a guy by  
23 the name of Lonnie and Wiener Man and all these other  
24 people?

25 A. Yes.

104

1 Q. You said that you went back to Sunset when  
2 Charles Mamou got arrested, right?

3 A. Yeah.

4 Q. Now did you tell anybody there at the police  
5 station that, hey, by the way, I've got information  
6 about a case from September of 1998, in Houston?

7 A. No.

8 Q. So there is no contact with you by police  
9 officials in between approximately two weeks after the  
10 5th, which would be around the 19th or 20th, '98, until  
11 a couple of weeks ago?

12 A. Correct.

13 Q. And then when you met with the detectives, do  
14 you recall the description of the detective that met  
15 with you?

16 A. Yeah, one of them was an older white guy. One  
17 of them was a middle age white guy.

18 Q. The older white guy has got kind of blondish  
19 hair, tall?

20 A. Grayish hair.

21 Q. And the other one is a little bit shorter,  
22 browner hair, kind of chunky?

23 A. Yeah, kind of chunky.

24 Q. They came up and saw you up in Dallas?

25 A. Right.

105

1 Q. Now did you introduce Bruiser to Charles Mamou?

2 A. No, I didn't.

3 MR. HILL: May I approach for a minute,  
4 Judge?

5 THE COURT: Yes.

6 Q. (BY MR. HILL) Mr. Melancon, when you were  
7 having a discussion with the members of the Houston  
8 Police Department a couple of weeks ago, did they assure  
9 you that you were not in trouble?

10 A. Correct.

11 MR. HILL: I'll pass the witness.

12 MR. MCCLELLAN: I have nothing further.

13 THE COURT: Ladies and gentlemen, if you  
14 would, please go back in the jury room. All the  
15 previous admonitions are still in effect. Don't talk  
16 about the case.

17 (Lunch recess.)

18 THE COURT: Proceed, please.

19 DR. ROGER MILTON,  
20 having been first duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MS. CONNORS:

23 Q. Sir, you're the same Dr. Milton that testified  
24 at the first part of the trial; is that correct?

25 A. Correct.

106

1 Q. Doctor, as an assistant medical examiner at the  
2 Harris County Medical Examiner's Office, do you have  
3 care, custody, and control of the autopsy reports that  
4 are generated by the M.E.'s Office?

5 A. Yes.

6 Q. And I'll ask you to look at State's Exhibit  
7 121. Is this an autopsy for Anthony Roy Williams?

8 A. Yes.

9 Q. What is that report number, sir?

10 A. 98-2463.

11 Q. And the autopsy for Anthony Roy Williams was  
12 done by Chief Medical Examiner, Joye Carter; is that  
13 correct?

14 A. Correct.

15 Q. And when Dr. Carter did her -- the autopsy on  
16 Mr. Williams, her findings were typed up in a report,  
17 this report, as a result of that; is that correct?

18 A. Correct.

19 MS. CONNORS: Your Honor, at this time I  
20 tender to defense counsel State's Exhibit 121 and offer  
21 it into evidence.

22 MR. HILL: Judge, we reurge the objections  
23 we made to all evidence previously in this matter.

24 THE COURT: It's overruled. State's  
25 Exhibit 121 is admitted.



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1 Q. (BY MS. CONNORS) When you photograph the body  
2 of the person upon whom you're doing the autopsy, do you  
3 also include the same autopsy report number on that  
4 picture of the face?

5 A. Yes, we do.

6 Q. Let me show you what's been marked for  
7 identification purposes as 122, 123, 124, 125, and 130.  
8 Are these the photographs that correspond to the autopsy  
9 of Anthony Williams?

10 A. Yes.

11 Q. And these photographs are taken in the normal  
12 course of business of the Medical Examiner's Office; is  
13 that correct?

14 A. That's correct.

15 MS. CONNORS: Your Honor, at this time  
16 tender to defense counsel those same exhibits, the  
17 numbers I've just read, and offer them into evidence.

18 MR. HILL: And I have the same objections,  
19 Your Honor, as before.

20 THE COURT: It's overruled. 122 through  
21 125 and 130 are admitted.

22 Q. (BY MS. CONNORS) Doctor, can you tell the jury  
23 when an external examination was done on Mr. Williams  
24 what the findings were?

25 A. The initial external examination performed on

109

1 Q. And how tall was he?

2 A. Seventy-four inches.

3 Q. And he weighed how much?

4 A. 238 pounds.

5 Q. Doctor, when an internal examination was done  
6 with Mr. Williams, what were the findings?

7 A. Aside from the findings that were the result of  
8 hospital intervention or surgical procedures, there was  
9 a gunshot wound tract that extended from the lower  
10 midline of the back through the backbone, or the very  
11 inferior aspect of the backbone or sacrum, across the  
12 pelvis. It traveled from the back to the front, from  
13 the right to the left, slightly upwards. The wound  
14 track perforated large vessels, the iliac artery and  
15 vein in the left pelvis, and a bullet was recovered in  
16 the anterior abdominal wall, the lower left side.

17 Q. Doctor, was an analysis done of the fluids in  
18 Mr. Williams' body?

19 A. Yes.

20 Q. And did it show there were any drugs in his  
21 system?

22 A. There was Phencyclidine in the blood.

23 Q. Doctor, I ask you to step down and keep your  
24 voice up, please, and show the jury where it is that the  
25 wound was on Mr. Williams, please. This is a photograph

108

1 Mr. Williams revealed a well-nourished, apparently  
2 well-developed, otherwise healthy black male who had  
3 multiple signs and evidence of surgical intervention and  
4 hospital procedures performed on him. It also revealed  
5 a penetrating gunshot entrance wound to the superior  
6 aspect of the nato (phonetically) cleft of the back,  
7 which is the crease that separates the right and left  
8 buttocks. Just at the apex on top of that crease, there  
9 was a gunshot entrance wound.

10 Q. Doctor, does it show in the autopsy report when  
11 Mr. Williams was shot?

12 A. There is an approximate time where the injury  
13 took place or where the body was discovered.

14 Q. On the first page, does it say that he was shot  
15 at approximately 10:00 p.m. on September 5th, 1998?

16 A. Correct.

17 Q. And then does it say that he was taken to a  
18 hospital, basically, because emergency procedures were  
19 performed?

20 A. Correct.

21 Q. And he was pronounced dead on September 6th,  
22 1998, at 12:46 a.m.?

23 A. Correct.

24 Q. And Mr. Williams was how old, Doctor?

25 A. He was twenty-seven years old.

110

1 that you take with the medical legal number; is that  
2 correct?

3 A. Right, this is a photograph of Mr. Williams'  
4 face. It's a small -- the lower aspect of the picture  
5 is the medical legal number.

6 Q. And State's Exhibit 123, Doctor, what does that  
7 show?

8 A. This is a distant view of the back and backside  
9 of Mr. Williams.

10 Q. And State's Exhibit 124, sir?

11 A. This is a close-up view of the gunshot entrance  
12 wound to the superior aspect of the buttocks, of the  
13 lower central back.

14 Q. Doctor, what is State's Exhibit 125? What is  
15 that a picture of?

16 A. This is a photograph of the pelvic x-ray that  
17 was done at the morgue. If you look closely, you can  
18 see a bullet, which is a bright area or white area just  
19 in the central left side of the pelvis.

20 Q. Could you put this orange dot that says bullet  
21 on it next to the area where you're referring to where  
22 the bullet is, please?

23 A. It's just above the orange dot.

24 Q. And Doctor, do you recognize Dr. Carter's  
25 handwriting?

111

1 A. Yes.  
 2 Q. Her initials?  
 3 A. Yes.  
 4 Q. State's Exhibits 130, what does that show, sir?  
 5 A. This is a photograph of the recovered bullet.  
 6 Q. Is that Dr. Carter's writing on the evidence  
 7 envelope?  
 8 A. Yes, it is, and her initials, also.  
 9 Q. And it's the same as the evidence envelope that  
 10 we introduced at the first part of the trial that was  
 11 testified with your writing; is that correct?  
 12 A. Right.  
 13 Q. That's a procedure that's done at the Medical  
 14 Examiner's Office?  
 15 A. Yes.  
 16 Q. To maintain the chain of custody?  
 17 A. Correct.  
 18 Q. Thank you, Doctor. You may return to your  
 19 seat. Doctor, what was the cause of death of  
 20 Mr. Williams?  
 21 A. The cause of death is listed as penetrating  
 22 gunshot wound to the lower back.  
 23 Q. And the manner of death?  
 24 A. Homicide.  
 25 MS. CONNORS: I'll pass the witness, Your

112

1 Honor.  
 2 MR. HILL: I have no questions.  
 3 THE COURT: Approach, please.  
 4 (NOTE: Defendant is reentering the  
 5 trial.)  
 6 THE COURT: Go ahead and call your next,  
 7 please.  
 8 MS. CONNORS: Yolanda Williams, Your  
 9 Honor.  
 10 THE COURT: For the record, the defendant  
 11 has elected to return to the courtroom and is present in  
 12 the courtroom now with his attorney.  
 13 THE COURT: Proceed, please.  
 14 YOLANDA WILLIAMS,  
 15 having been first duly sworn, testified as follows:  
 16 DIRECT EXAMINATION  
 17 BY MS. CONNORS:  
 18 Q. Ma'am, could you introduce yourself to the  
 19 jury?  
 20 A. Yolanda Williams.  
 21 Q. How old are you, Miss Williams?  
 22 A. Thirty-three.  
 23 Q. And where are you from?  
 24 A. Lake Charles, Louisiana.  
 25 Q. And how about your parents? Where are they

113

1 from?  
 2 A. Sunset, Louisiana.  
 3 Q. How long have you been in Houston?  
 4 A. For twenty-seven years.  
 5 Q. Did you go to high school here?  
 6 A. Yes.  
 7 Q. Where did you go to high school?  
 8 A. James Madison.  
 9 Q. After you finished high school, what did you  
 10 do?  
 11 A. I went to Houston Community College for a  
 12 while.  
 13 Q. And are you working now?  
 14 A. Yes.  
 15 Q. And where are you working?  
 16 A. Baylor College of Medicine.  
 17 Q. How long have you worked for Baylor College of  
 18 Medicine?  
 19 A. Two years.  
 20 Q. How are you related to Anthony Williams?  
 21 A. That's my baby brother.  
 22 Q. And how many children were in your family  
 23 before September of 1998?  
 24 A. Three.  
 25 Q. And what number were you?

114

1 A. One.  
 2 Q. And then who was the second child?  
 3 A. James.  
 4 Q. And how old is James?  
 5 A. Thirty-one.  
 6 Q. And then Anthony was your baby brother; is that  
 7 correct?  
 8 A. Uh-huh.  
 9 Q. Are your parents still alive?  
 10 A. Yes.  
 11 Q. Where do they live?  
 12 A. Here.  
 13 Q. In Houston?  
 14 A. Uh-huh.  
 15 Q. Your brother had a nickname; is that right?  
 16 A. Yes.  
 17 Q. What was that nickname?  
 18 A. Bruiser.  
 19 Q. Where did he get that nickname from?  
 20 A. My Aunt Mack.  
 21 Q. Your Aunt Mattie?  
 22 A. Mack.  
 23 Q. Mack. When did Aunt Mack give your brother his  
 24 nickname?  
 25 A. When he was a baby.

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1 Q. Why did she give him that nickname?

2 A. Because he was so red that when you touched him  
3 he would bruise.

4 Q. Did you live back -- before September of 1998,  
5 did you live near your brother?

6 A. Yes.

7 Q. What area of town did he live in?

8 A. Hiram Clarke.

9 Q. Did your parents live in that same area?

10 A. Yes.

11 Q. Let me direct your attention back to September  
12 5th, 1998. Did you see Anthony that day?

13 A. Yes.

14 Q. Miss Williams, what did you call your brother?

15 A. Bruiser.

16 Q. And where did you see your brother, Bruiser?

17 A. At my other brother, James', house.

18 Q. And about what time was it that you saw him?

19 A. Around 11:00.

20 Q. Would that be 11:00 in the morning or 11:00 at  
21 night?

22 A. 11:00 that morning.

23 Q. Were you with anybody when you saw him?

24 A. My son.

25 Q. And how old is your son?

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1 A. My sister-in-law.

2 Q. And what's her name?

3 A. Valerie Williams.

4 Q. And how long had Valerie and your brother been  
5 married?

6 A. About seven or eight years.

7 Q. Did they have a child?

8 A. Yes.

9 Q. What is his name?

10 A. Anthony.

11 Q. Is -- was he named after your brother?

12 A. He had his first name. His middle name was  
13 different.

14 Q. And how old is Anthony now?

15 A. Seven.

16 Q. When you got to the hospital, where was your  
17 brother?

18 A. They said in surgery.

19 Q. And at some point while you're waiting, did  
20 your parents come?

21 A. Yes.

22 Q. While you were waiting, how much time passed  
23 before you found out your brother had died?

24 A. I don't know.

25 Q. When is the next time you saw your brother?

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1 A. Ten.

2 Q. Did you and your son go out and take your  
3 brother to get something to eat?

4 A. Yes.

5 Q. After you left getting your brother something  
6 to eat, what did you do?

7 A. I dropped him off on West Fuqua.

8 Q. Is that anywhere near Allover and West Fuqua?  
9 Do you know where that is?

10 A. It's between Hiram Clarke and West Fuqua.

11 Q. And about what time was it that you dropped him  
12 off?

13 A. Around 1:30.

14 Q. When is the next time you saw your brother?

15 A. In the hospital.

16 Q. And about what time was it that you went to the  
17 hospital?

18 A. Around 10:30, 11:00 o'clock.

19 Q. That evening?

20 A. That night when they called.

21 Q. And what day of the week was this, Miss  
22 Williams?

23 A. A Saturday.

24 Q. When you got to the hospital, were any of your  
25 other family members there?

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1 A. When I went into the room.

2 Q. Why is it that you went into the room?

3 A. Because the doctors came out and told us that  
4 he was dead.

5 Q. Did they need someone, a family member to  
6 identify him?

7 A. Yes.

8 Q. And why didn't your mom or dad go in?

9 A. My mother couldn't go in. She had had a heart  
10 attack a couple of years before; and we had to take her  
11 down to the emergency room, because she thought she was  
12 having another one.

13 Q. This is while -- after your brother had died?

14 A. When they came out and told us that he had  
15 died.

16 Q. Miss Williams, let's talk about the effect that  
17 your brother's murder has had on your family. What  
18 effect has it had on your oldest brother, James?

19 A. He cries.

20 Q. Were he and Bruiser close?

21 A. Yes.

22 Q. Did Bruiser ever live with your brother, James?

23 A. Yes.

24 Q. Is your brother, James, able to talk about  
25 Bruiser?

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1 A. No.  
 2 Q. Where does your brother, James, live?  
 3 A. He lives in Lake Charles, Louisiana.  
 4 Q. Did he come here for the trial?  
 5 A. Yes.  
 6 Q. What about Aaron -- I'm sorry -- Anthony,  
 7 Bruiser's son? What effect has it had on him?  
 8 A. He's okay, but if you talk about -- if you ask  
 9 him too many questions about his dad, he stops talking.  
 10 Q. He clams up, won't talk about it? Have you  
 11 ever been with Anthony, the little boy, since his dad's  
 12 died when he's been asleep?  
 13 A. Yeah, when he spends the weekend at my house.  
 14 Q. How does he act when he's asleep?  
 15 A. He imagines that his daddy is playing with him.  
 16 Q. Does he speak about his daddy when he's asleep?  
 17 A. He tells his daddy to stop.  
 18 Q. How about with respect to the cemetery? Does  
 19 he ever ask about the cemetery?  
 20 A. All the time.  
 21 Q. What does he say?  
 22 A. Auntie, can you take me to the cemetery?  
 23 Q. How about, did he go to your brother's funeral?  
 24 A. Yes.  
 25 Q. Does he ever talk about that?

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1 A. He wishes that his daddy's funeral was again so  
 2 he could see him.  
 3 Q. So it was an open casket at your brother's  
 4 funeral?  
 5 A. Yes.  
 6 Q. What effect has it had on you, Miss Williams?  
 7 A. Devastation, just -- what do you do? I'm the  
 8 oldest of three children. My baby brother is gone. I  
 9 don't have but one brother left.  
 10 Q. Let me show you a picture, Miss Williams,  
 11 State's Exhibit 128. Was this a picture of your brother  
 12 and his son?  
 13 A. Yes.  
 14 Q. And when would that picture have been taken,  
 15 about how long ago?  
 16 A. About five years ago.  
 17 Q. Okay. How is your dad doing, Miss Williams?  
 18 What effect has it had on him?  
 19 A. He's fine physically. Mentally he's not.  
 20 Q. In what way is he not?  
 21 A. He's angry. He's hurtful.  
 22 Q. Did you try -- try and ask him to come to the  
 23 trial?  
 24 A. I asked him and my mother, and my mother said  
 25 she wasn't coming.

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1 Q. What effect has it had on your mom?  
 2 A. Mentally she's still -- she doesn't want to  
 3 deal with the fact that my little brother is gone.  
 4 Q. Do you think she's accepted the fact that he's  
 5 gone?  
 6 A. I don't think she has, when she still talks  
 7 about him like he's coming.  
 8 Q. So she talks about him as if he's still alive;  
 9 is that right?  
 10 A. Yes.  
 11 Q. What other effects do you see, with respect to  
 12 your brother's death, on your mom?  
 13 A. Her diabetes has gotten worse.  
 14 Q. How old is your mom?  
 15 A. Fifty-three.  
 16 Q. Thank you, ma'am.  
 17 MS. CONNORS: I have no further questions,  
 18 Your Honor.  
 19 CROSS-EXAMINATION  
 20 BY MR. HILL:  
 21 Q. Miss Williams, my name is Wayne Hill. You and  
 22 I have never met or spoke before, correct?  
 23 A. Correct.  
 24 Q. I know that it's very painful to lose a loved  
 25 one. I'm going to have to ask you some questions that

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1 might be difficult for you to answer. Will you bear  
 2 with me, please?  
 3 A. Uh-huh.  
 4 Q. In the course of the whole family discussing  
 5 the impact of your brother's death, has the topic come  
 6 up about what was going on that night, where he was that  
 7 night, what he was doing that night?  
 8 A. The topic has come up about maybe how he felt  
 9 that night.  
 10 Q. Did anybody discuss or did anybody wonder what  
 11 he was doing that night that put him in that position?  
 12 A. We all wonder that.  
 13 Q. Did the family ever talk about whether he was  
 14 ever involved in any kind of drug dealing or anything in  
 15 his lifetime?  
 16 A. No drug dealing that we knew of.  
 17 Q. And were there times when your brother -- was  
 18 your brother ever in trouble, that you know of?  
 19 A. Yes.  
 20 Q. What type of trouble would he get into?  
 21 MS. CONNORS: Judge, may we approach the  
 22 bench, Your Honor?  
 23 THE COURT: All right.  
 24 (Off-the-record discussion.)  
 25 Q. (BY MR. HILL) At the time that your brother,



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1 Bruiser, passed on the 5th of September of '98, was --  
2 was he and the mother of the child living together as  
3 husband and wife?

4 A. No.

5 Q. When had they separated?

6 A. A year before.

7 Q. Okay. And who had custody of Anthony?

8 A. Valerie.

9 MR. HILL: I have no further questions.

10 Thank you, Judge.

11 MS. CONNORS: I have no further questions.

12 THE COURT: Call your next, please.

13 MS. CONNORS: Patricia Gibson. Judge, may  
14 we approach?

15 (Off-the-record discussion.)

16 THE COURT: Ladies and gentlemen, if you  
17 would, please go back in the jury room.

18 (Jury out.)

19 PATRICIA GIBSON,  
20 having been first duly sworn, testified outside the  
21 jury's presence as follows:

22 VOIR DIRE EXAMINATION

23 BY MR. HILL:

24 Q. Miss Gibson, I'm just going to ask you a couple  
25 of questions regarding your son, Terrence, when he was

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1 house with Dion.

2 THE COURT: Thanksgiving, 1998?

3 THE WITNESS: That's correct, that was my  
4 first time meeting Dion.

5 MR. MCCLELLAN: For the record, he does  
6 have prior convictions. I do not believe the prior  
7 convictions of any deceased is admissible with regard to  
8 that issue about whether or not it would show the  
9 likelihood of the person being the aggressor on guilt or  
10 innocence stage of the trial.

11 THE COURT: We're fishing outside the  
12 presence of the jury. Do you know what he did?

13 MR. MCCLELLAN: I can you give you the  
14 full record.

15 THE COURT: But do you happen to know what  
16 that was for?

17 MR. MCCLELLAN: No.

18 THE COURT: That's the only thing she  
19 knows about, and she doesn't know what it was for?

20 MR. MCCLELLAN: I can't --

21 THE COURT: You don't need to get the  
22 record.

23 MR. MCCLELLAN: I thought they had seen  
24 the record. If not, I want to make sure they do.

25 MR. HILL: I'm just wanting to know.

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1 alive. He had been in trouble several times, correct?

2 A. Yes, a couple of times.

3 Q. What was he convicted of?

4 A. I don't know all the details that's involved.  
5 We've always told him that when they were for traffic  
6 tickets, we were there for them. But if they made  
7 foolish decisions or due to other circumstances, they  
8 were on their own. So I don't know all the details.

9 Q. Do you know whether or not he spent time in  
10 jail or in prison?

11 A. Yes, he did spend time in jail.

12 Q. And where was that? Here in Houston?

13 A. Harris County.

14 Q. For how long?

15 A. I think about -- I'm not quite sure if it was  
16 about twelve or fifteen days. I'm not sure.

17 Q. Any other time that you're aware of?

18 A. For a traffic ticket, yes.

19 Q. But other than traffic tickets, he spent twelve  
20 to fifteen days in jail?

21 A. Yes.

22 Q. And was that just prior to the date of his  
23 death? In other words --

24 A. It was right before Thanksgiving, the day  
25 before Thanksgiving. He had come home. He came to my

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1 THE COURT: So you know what it is?

2 MR. HILL: I don't recall off the top of  
3 my head, because I don't have that record at my easy  
4 disposal, either. My question is, am I going to be  
5 allowed to introduce the fact that he had been in jail  
6 prior to Thanksgiving?

7 THE COURT: I don't see why you should at  
8 this point; but you said you don't have the record, but  
9 you've got your notes of what was in the record.

10 MR. HILL: I can look and see.

11 MR. MCCLELLAN: If you want to know what  
12 it is, let me go get it and give it to you.

13 THE COURT: I don't need it if I'm ruling  
14 this way.

15 MR. MCCLELLAN: Okay.

16 THE COURT: Let's get the jury, please.  
17 Okay. Regarding while the jury's out, the witness was  
18 testifying that she believed her son spent some time in  
19 jail, Harris County Jail for about twelve to fifteen  
20 days Thanksgiving of '98. I'm going to allow the State  
21 to present --

22 MR. MCCLELLAN: Defense.

23 THE COURT: I'm sorry, the defense. Bring  
24 them back.

25 (Jury is brought in and seated.)

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1 THE COURT: Ladies and gentlemen, this  
2 witness was previously sworn.

3 DIRECT EXAMINATION

4 BY MS. CONNORS:

5 Q. Miss Gibson, you are the same Patricia Gibson  
6 that testified at the first part of the trial; is that  
7 right?

8 A. Yes, ma'am.

9 Q. Miss Gibson, what was the last time you saw  
10 your son, Terrence?

11 A. December the 7th, the 6th. That Sunday  
12 afternoon we all convened at my mom's for church, and he  
13 was there. He came by.

14 Q. Were your other sons or any other children  
15 there?

16 A. Yes.

17 Q. Was your husband there?

18 A. Yes, he was. I'm sorry, no, not that Sunday,  
19 no, he was not.

20 Q. So both your sons, other sons, or just one  
21 there?

22 A. Yes, my sons and their girlfriends, yes.

23 Q. What were y'all doing at your mom's house when  
24 your son, Terrence, came?

25 A. We were looking at pictures. They asked to see

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1 their baby pictures, the other two, their girlfriends.  
2 And we were on the floor looking at pictures.

3 Q. So, all of y'all were looking at past baby  
4 pictures of each of the children; is that correct?

5 A. That's correct.

6 Q. Were y'all enjoying yourself and laughing and  
7 having a good time?

8 A. Yes.

9 Q. When is the last time you laughed like that?

10 A. It's been a while.

11 Q. When your son left that evening, what did he  
12 say to you?

13 A. We were all on the floor, and he just walked  
14 in. And everybody just kind of said, hey, Terrence.  
15 Because we had been there, and we started all looking at  
16 pictures out on the floor. And we were just looking at  
17 baby pictures; and he stayed awhile, went in the  
18 kitchen. He always goes in to see what my mom cooks.  
19 And we laughed and talked awhile, and then his pager  
20 went off; and he said, mom, I'm fixing to go. And he  
21 went to my mom.

22 Q. What did he do when he went to your mom?

23 A. He normally kisses my mom on the way out, and  
24 he just kind of patted her on the head, and he was on  
25 his way out. And I said, Are you about to leave? And

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1 he said, Yes. And I got up and I went in the garage  
2 with him.

3 Q. Did you say anything to him, or did you hug him  
4 at all?

5 A. Yes, I did. I said, Terrence, be careful. And  
6 he left.

7 Q. Did you say good-bye?

8 A. Yes, I did. And I always said, Mom loves you.  
9 So he knew that.

10 Q. And that's the last time you saw him alive?

11 A. That's correct.

12 Q. And how did you find out he had been killed?

13 A. I got a phone call about 1:15 Monday morning  
14 from Hermann Hospital, a Claudette at Hermann Hospital.

15 And she said, We have a young man here, and I'm not  
16 quite sure that it is your son. And she said, Does your  
17 son have a tattoo? And I said, Yes. She said, You  
18 need to get to Hermann Hospital as soon as you can.

19 Q. Did she tell you that he had been injured or  
20 how he had been injured?

21 A. No. She said, We have -- she didn't even say  
22 shot. She said, We have a young man here, and I'm not  
23 even quite sure if it's your son; but we need for you to  
24 get to the hospital as quickly as possible. And she  
25 asked me did he have a tattoo, and I said yes.

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1 Q. Who did you go to Hermann Hospital with?

2 A. My husband and I picked up my baby son on the  
3 way. I called him immediately after that happened. I  
4 got the call, and I picked him up at his apartment.

5 Q. What is your baby son's name?

6 A. His name is Walter, IV, Walter Gibson, IV.

7 Q. How old is he?

8 A. They're thirteen months apart.

9 Q. When you say they?

10 A. Terrence is twenty-two and he's twenty-one.  
11 They're thirteen months apart.

12 Q. Were they close?

13 A. Very much, yes.

14 Q. When you were driving to Hermann Hospital,  
15 about how long did that take from your house?

16 A. I would think not long, because I was driving  
17 very fast.

18 Q. What was going through your mind?

19 A. I guess I just thought probably he was injured  
20 or in a car wreck. I didn't know.

21 Q. When you got to the hospital, who did you speak  
22 with?

23 A. I went directly to the emergency room and asked  
24 for a Claudette, because she said she would be waiting  
25 when I got there.

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1 Q. Did you speak with her?

2 A. Yes, I did. She took us immediately to the  
3 critical care waiting room. And I just assumed, I  
4 guess, by seeing critical care that he was in critical  
5 condition or what. All I wanted to do was get to him.  
6 And then she said, I'm going to take you around to the  
7 trauma center. And they took us around to the trauma  
8 center. And the lady, the nurse that was there said,  
9 The doctors need to come out and speak with you. We're  
10 going to take you back to a waiting area, of which they  
11 did.

12 Q. And how soon before you were able to speak with  
13 a doctor?

14 A. It was about three minutes. They came in. It  
15 was shortly after. And my family had already made it.  
16 Everybody was already there.

17 Q. What did the doctor say to you?

18 A. When they walked in, they asked us to sit down  
19 and said that they had did everything possible for my  
20 son and -- but the way the bullet went through his  
21 heart, there was no way to --

22 Q. When the doctor told you that the bullet had  
23 gone through his heart and he had died, what went  
24 through your mind?

25 A. I was devastated.

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1 Q. Were you able to go then see your son?

2 A. No, they wouldn't let me see him. But my  
3 oldest son and my husband said that they didn't think it  
4 would be a good idea, that they would go. And they went  
5 to see him.

6 Q. Did -- where did they have to go to see  
7 Terrence?

8 A. In the morgue of Ben Taub.

9 Q. So they had to go to Ben Taub to identify his  
10 body?

11 A. I'm sorry, in Hermann, in the morgue.

12 Q. Hermann Hospital?

13 A. Yes.

14 Q. Can you tell the jury what effect it's had on  
15 your younger son, Walter, the one that was thirteen  
16 months apart, from Terrence's being murdered?

17 A. I was very concerned about him, because they  
18 were so close. He had his own apartment. I shared with  
19 my cousin, I thought he would be one that would revert  
20 to drinking. And when he did, that's when we had a  
21 problem with him. We had to stay close to him and talk  
22 to him a lot, trying to get him to come to church with  
23 me; because he was having a very difficult time dealing  
24 with it, because they were very close.

25 Q. How about your older son? What effect has it

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1 had on him?

2 A. I think more of him is because he actually saw  
3 Terrence, the last one to see him actually in the morgue  
4 and just see him that way. That was very difficult for  
5 him, and we've had to talk about it over and over again.  
6 But that's the last thing, other than seeing him at the  
7 funeral or whatever. He relives that over and over  
8 again.

9 Q. How about your husband, Miss Gibson? What  
10 effect has it had on burying his son?

11 A. We had to leave for awhile and just take an --  
12 just to get away, be able to try to talk it out. And I  
13 think with him, it was that the -- the times that, I  
14 guess -- my son has a five-month-old baby he'll never  
15 get a chance to know, and we have had to talk it out.

16 Q. How about you, as a mom? What was it like to  
17 bury your son?

18 A. That's something that I have to live with every  
19 day and think about. Is there something else I could  
20 have said? Is there something else I could have done?  
21 Terrence was a follower. He was not a leader. And I  
22 think more so, of us being parents, trying to raise our  
23 boys up as good citizens and as good boys. But when  
24 they get a certain age, you can't make choices for them.  
25 And he made some bad choices, as far as friends. And at

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1 twenty-two years old -- when he was young, we could  
2 choose his friends; but it seems like the more we talked  
3 to him, that made him feel big, or I don't know; but he  
4 wasn't raised that way. And that's what, more everyday,  
5 I guess, that you have to live with every day, coming up  
6 as a young boy in church and in a Christian family home,  
7 that parents work hard to display hard-working parents.  
8 And when he got older he made decisions to be with what  
9 I consider the wrong crowd. And that's, I guess, the  
10 thing that's hard every day is, is there something I  
11 could have said? Is there something else I could have  
12 did that my son would still be alive today?

13 Q. So you blame yourself a lot of the time, Miss  
14 Gibson?

15 A. I don't think so much. I think I did  
16 everything I could; because when you get a certain age,  
17 they make choices. But these choices cost him his life,  
18 and that's the thing I can't go back and undo and I have  
19 to live with every day of my life.

20 Q. Thank you, ma'am.

21 MS. CONNORS: I have no further questions,  
22 Your Honor.

23

24

25

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## CROSS-EXAMINATION

BY MR. HILL:

Q. Ma'am, take a moment to try and gain your composure. Okay? I don't want to ask you a lot of questions, but I want to give you a chance to adjust.

As a parent, I imagine it must be very difficult knowing that you and your husband did everything you could and instill in your son all the values and all the morals that you felt were important in his life; and yet, as a young adult, apparently there were some things that he chose to do that you don't think were appropriate. Is that a fair statement?

A. Yes.

Q. You made a comment that he is a follower and not a leader, and he made poor choices with regards to the friends he associated with. How has the family dealt with the fact that he was involved with the likes of Dion Holley and Kevin Walters. Has that been the subject of any discussion?

A. I didn't know Dion. I didn't know Kevin Walters. That's the first I've known, since this incident happened, of Kevin Walters. Dion -- I have heard Dion's name for about a year-and-a-half. I met Dion for the first time Thanksgiving Day, when he came over with my son.

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Q. And --

A. I go to church with -- his grandmother goes to my church, but I don't know him.

Q. Has Dion or Kevin ever called to come over to your home to offer their condolences?

A. Dion called the day of the tragedy, that Monday, at the hospital.

Q. What did he say?

A. He said, I want to apologize to you what happened. I said, I don't want to know what happened to my son. And he started this story of the good samaritan and all that. And I said, Dion, let me say this to you: You need to change your life, young man. And he said, I feel like I owe Terrence something. I said, You don't owe Terrence anything. My son's book is closed. But if you can learn something out of this, you need to change your life.

Q. Thank you, ma'am.

MR. HILL: No further questions.

## REDIRECT EXAMINATION

BY MS. CONNORS:

Q. Miss Gibson, did Dion Holley come to your son's funeral?

A. No, he didn't come to the funeral. He called the Friday -- Wednesday before the service, the

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visitation, and asked if he could come. And my pastor and wife were at the house, at my mom's. And my pastor talked with him, because I didn't know what to -- I didn't even know -- I hadn't even thought about that. And my pastor talked with him for about forty-five minutes. And he did show up, and I recognized him only because of the bandage. His forearm or whatever was bandaged. He didn't say anything to me. He just went up to my son and stood there for a while, and then he went back.

MS. CONNORS: Thank you, ma'am. I have no further questions.

## RE-CROSS-EXAMINATION

BY MR. HILL:

Q. He never changed the story from the good samaritan story, did he?

A. I never talked to him other than him calling to ask if he could come to the -- I said no to the funeral. My pastor -- and I guess my pastor talked with him, as far as visitation.

Q. But despite your counseling with him when he first called, and you told him to get rid of the good samaritan story?

A. I just needed to know the truth, and I didn't feel like that was the truth.

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Q. You mentioned that your son, in his life, had a five-month-old.

A. Yes.

Q. And who cares for that five-month-old now?

A. His mom.

Q. Where does she live?

A. Off of Kelly, on Kashmere. He was Terrence's pastor. He was under his leadership.

Q. How old is the mom? Does she come over and visit with you?

A. Oh, yes. We offer to visit with the baby at anytime.

Q. Okay. Thank you.

MR. HILL: I have no further questions, Your Honor.

THE COURT: You may stand down.

Call your next.

MS. CONNORS: Your Honor, State calls James Carmouche.

JAMES MARTIN CARMOUCHE, having been first duly sworn, testified as follows:

## DIRECT EXAMINATION

BY MS. CONNORS:

Q. Sir, are you the same James Carmouche that testified at the first part of the trial?



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- 1 A. Yes, ma'am.
- 2 Q. Mr. Carmouche, are you married?
- 3 A. Yes, ma'am.
- 4 Q. How long have you been married?
- 5 A. Twenty years.
- 6 Q. Are you from Houston?
- 7 A. Yes, ma'am.
- 8 Q. Did you go to high school here?
- 9 A. Yes.
- 10 Q. Where did you go to high school?
- 11 A. Kashmere Senior High.
- 12 Q. Where did you meet your wife?
- 13 A. At high school.
- 14 Q. What's your wife's name?
- 15 A. Carolyn Ann Carmouche.
- 16 Q. After you finished high school, what did you
- 17 do?
- 18 A. I went to San Jacinto College.
- 19 Q. And at what point did you and your wife get
- 20 married?
- 21 A. After about two years after I graduated.
- 22 Q. And you said back before December of 1998, you
- 23 had how many children?
- 24 A. Seven.
- 25 Q. And what was the oldest child's name?

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- 1 A. Leticia.
- 2 Q. How old is Leticia now?
- 3 A. Nineteen.
- 4 Q. What does Leticia do?
- 5 A. She's a full-time student at U of H and works
- 6 part-time.
- 7 Q. And then before December of 1998, who would
- 8 have been your second child?
- 9 A. Mary was the second child.
- 10 Q. And Mary was how old when she was murdered?
- 11 A. Seventeen.
- 12 Q. When did she turn seventeen? What month?
- 13 A. August the 13th.
- 14 Q. Who is the next child?
- 15 A. James, Jr.
- 16 Q. How old is James, Jr.?
- 17 A. At the time?
- 18 Q. Right now.
- 19 A. Fifteen.
- 20 Q. And then who?
- 21 A. Then Chris.
- 22 Q. How old is Chris?
- 23 A. Chris is ten.
- 24 Q. Most of us don't have that many children that
- 25 we have to remember, Mr. Carmouche. And after Chris,

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- 1 who is your next child?
- 2 A. Christina.
- 3 Q. How old is Christina?
- 4 A. Eight.
- 5 Q. Who's the baby?
- 6 A. There is John and Cynthia.
- 7 Q. John is how old?
- 8 A. John is seven, just turned seven. And Cynthia
- 9 is five.
- 10 Q. Let's go back to December 7th, 1998. You told
- 11 the jury, I believe, earlier that you had seen a blue
- 12 Lexus, and there had been a shooting on the news; is
- 13 that correct?
- 14 A. Yes, ma'am.
- 15 Q. And they talked about a girl, right?
- 16 A. Right.
- 17 Q. And at that point, you ran to your daughter's
- 18 bedroom; is that right?
- 19 A. Right.
- 20 Q. And she wasn't there; is that right?
- 21 A. This is correct.
- 22 Q. Mr. Carmouche, what was going through your mind
- 23 when Mary wasn't there?
- 24 A. Total panic. I couldn't think for a second; so
- 25 that's when I told my wife to go, you know, wake up

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- 1 Leticia so she could dial the phone. But right then, I
- 2 knew it was Mary. It was like, oh, no. It's like your
- 3 worst nightmare. It's a dream, but it's real. And it's
- 4 like something on TV, but you're watching it and it's
- 5 happening to you all at the same time.
- 6 Q. And Leticia got up, and is that when you told
- 7 her to call the police?
- 8 A. Yes. I told her to call the police while I
- 9 stayed, you know, in the den watching the TV to see if
- 10 there was going to be anymore updates on the situation.
- 11 And she got in contact with them, I guess, on the
- 12 telephone and described Mary, her clothing. They asked
- 13 me was it any more, you know, tattoos or any marks that
- 14 could be identified, what she had on when she left, you
- 15 know, how tall, hair color. And we gave them all that
- 16 information.
- 17 Q. Where did Mary go to school?
- 18 A. She attended Barbara Jordan Senior High.
- 19 Q. What grade was she in?
- 20 A. She was a senior.
- 21 Q. And when she finished school, what did she hope
- 22 to do?
- 23 A. Well, she was getting ready to get a
- 24 cosmetologist's license. Mary wanted to be a model or
- 25 cosmetologist and, you know, just the average teenager

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1 dreams. But she was doing hair at the time, friends'  
2 hair and everyone in the neighborhood, so she liked  
3 that. And then she was either going to do that or go --  
4 I think her and a friend of hers was getting ready to go  
5 into the Navy.

6 Q. Mr. Carmouche, what was going through your mind  
7 while you were waiting to find out any news, if you have  
8 to wait? This is the very early morning hours, about  
9 6:30, 6:40 Monday morning?

10 A. 5:00 o'clock.

11 Q. How do you spend that entire day? What are  
12 you doing?

13 A. Well, just walking from door to door outside,  
14 around the house, on the telephone, you know, trying to  
15 call for information. I wanted to go look for her, but  
16 where to look -- Houston is a big old city -- trying to  
17 find out who else was involved, you know, who was  
18 involved. I wanted to find out. It was Dion and  
19 everybody else together. It's like, you want to go  
20 search, but we are -- I want somebody to call. Every  
21 time the phone rings, you just want to -- it to be, We  
22 found her alive; or she's calling home saying, Come get  
23 me, you know. It was just like -- I don't know -- worst  
24 nightmare. You know, it's tense. You be so tense. And  
25 any little sound or anything, you just hope it's her.

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1 People started coming to the house. You just want that  
2 doorbell -- every time it rings or someone knocks, you  
3 want it to be her.

4 Q. Do a lot of relatives and friends start  
5 gathering at your house on Monday morning?

6 A. Yes, ma'am.

7 Q. How about Tuesday?

8 A. Tuesday. Monday, Tuesday, Wednesday -- well,  
9 the rest that week.

10 Q. Did you get some information about Lynchester  
11 so that you went over to that address?

12 A. Yes, ma'am.

13 Q. When you got to that address, were the police  
14 already there?

15 A. Yes, ma'am.

16 Q. Mr. Carmouche, did you drive over there by  
17 yourself or were you with somebody?

18 A. Close friends of the family, Jerry Aldine came  
19 with me. And my son, James, Jr., came too.

20 Q. Did you go and you then talk to the police  
21 officers?

22 A. Yes.

23 Q. What did you tell them?

24 A. Well, when I entered the crime scene, when I  
25 crossed the tape, they tried to stop me. And I told

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1 them I was the father and I wanted to see if the person  
2 that they found was my daughter, but they wouldn't allow  
3 me onto the crime scene in the back of the house, you  
4 know. So it was a detective there. And I asked him if  
5 I could describe the clothing, jewelry -- and she had a  
6 tattoo -- if I would describe that, could he tell me if  
7 it was my daughter, you know. So I described the  
8 clothes she had on, the jewelry, and a tattoo she had,  
9 and the color of her clothes. And they said yeah, it  
10 was her.

11 Q. What jewelry did you describe, Mr. Carmouche?

12 A. Ma'am?

13 Q. What jewelry did you describe?

14 A. She had just purchased a necklace with her  
15 initial on it, an M. It was a gold M.

16 Q. And since Mary was killed, who wears that  
17 necklace now?

18 A. Elizabeth, my daughter, or my wife wears it.  
19 They kind of trade it off.

20 Q. When the police officer was able to tell you  
21 whether that was your daughter, were you then not able  
22 to see --

23 A. The coroner wouldn't let me in. They worried I  
24 was going to disturb the crime scene or go grab up  
25 something. I told them I just want to see her.

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1 Q. Would they allow you to see her?

2 A. No.

3 Q. How long were you out there with your son and  
4 your friend?

5 A. Couple of hours, some hours, till late. I  
6 think we didn't leave till 11:30 that night.

7 Q. What was going through your mind during those  
8 hours?

9 A. I wanted to find who had did this.

10 Q. When you left Lynchester, at any point, did you  
11 ever get to see whether that was Mary or not?

12 A. Not until the detectives came the next day with  
13 the photographs for me to identify.

14 Q. So, now, this is Wednesday?

15 A. Yes.

16 Q. What's going through your mind? Do you feel  
17 certain that that was your daughter? Is there anything  
18 saying, well, maybe she's still out there alive? What  
19 do you think?

20 A. No. From that night it was her.

21 Q. You felt that was her?

22 A. I knew it; because she just have a little star,  
23 a little tattoo star, the tattoo on top of her foot,  
24 because she knew I was always after her about getting  
25 one. So she put it on her foot where her shoe would

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1 cover it up, and she had a little rose on the top of her  
2 shoulder. And then she had the necklace with the M on  
3 it; but the red Tommy Hilfiger shoes, the red jeans, the  
4 hair color.

5 Q. The next day did Sergeant Novak from the  
6 Houston Police Department come to your home?

7 A. Yes.

8 Q. Were your children all there?

9 A. Yes.

10 Q. Were there friends and relatives from both  
11 Houston and out of town at that point?

12 A. Yes.

13 Q. When Sergeant Novak came to your house, what  
14 did he show you?

15 A. Well, when he drove up, we were in the front  
16 yard with some friends. So we left and went around to  
17 the carport area, and he showed me a morgue picture to  
18 identify. And I identified her as Mary.

19 Q. And this would have been what day, sir?

20 A. Wednesday around noon.

21 Q. And how much longer before the funeral  
22 happened?

23 A. Between Saturday.

24 Q. What religion are you, Mr. Carmouche?

25 A. Catholic.

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1 Q. What's your parish church?

2 A. St. Francis.

3 Q. Were you able to have the funeral at St.  
4 Francis?

5 A. No, we weren't. The church was too small.

6 Q. Did you have people come from different parts  
7 of the United States to the funeral?

8 A. Yes.

9 Q. Approximately how many people came to Mary's  
10 funeral?

11 A. About fifteen hundred, or close to a thousand.

12 Q. Mr. Carmouche, let's talk about your family.  
13 Before Mary was killed, did you and your wife used to go  
14 on family outings with your children?

15 A. Yes, every weekend we either went fishing, to  
16 the park, zoo. We rode up into East Texas to friends of  
17 ours' houses that we would deer hunt with. So they had  
18 children, too. So I would bring mine along, my wife.  
19 And while we were getting the stands and stuff prepared,  
20 my sons came with me, and the girls stayed and played  
21 with Danny's children. Either that or we went to  
22 someplace in Cleveland. We used to go fishing all the  
23 time, called Double Lake Recreational Area. We went  
24 there a lot.

25 Q. And Mary and Leticia would go with you and your

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1 kids?

2 A. We had most of Mary's birthday parties where  
3 that was. She liked that spot.

4 Q. What effect has it had on your children since  
5 Mary was murdered?

6 A. I guess they're puzzled. They're wondering,  
7 confused, scared; because until recently, Christina  
8 wouldn't go back in the room she shared with Mary.  
9 Well, no one slept in there but me. So I let Christina  
10 and my other daughter sleep in the bed with my wife. I  
11 slept in their room.

12 Q. When Mary was killed, did Mary have lots of  
13 pictures of herself that she had taken for modeling or  
14 whatever in that room?

15 A. Yes.

16 Q. On the wall?

17 A. On the wall.

18 Q. When you went to sleep in that room, what did  
19 you do with the pictures?

20 A. I had to take them down.

21 Q. Why is that?

22 A. Because every time you look around, it was  
23 Mary's face everywhere.

24 Q. And you said it wasn't till recently that you  
25 were able to get Christina -- how old is Christina?

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1 A. She's ten.

2 Q. How did you get them back in there? Did you  
3 buy some type of toy?

4 A. I bought a TV and Nintendo Play Station, and  
5 they'll go play the games and everything. By then, it's  
6 time for bedtime. What we did, we switched the rooms  
7 around. Christine and Cynthia took John and Chris'  
8 room, and Chris and my oldest son sleeps in there. But  
9 Christina and my youngest daughter still won't sleep in  
10 that room.

11 Q. Mr. Carmouche, are your parents both still  
12 alive?

13 A. Yes, ma'am.

14 Q. Do they live here in Houston?

15 A. Yes, ma'am.

16 Q. Was your dad -- did he know Mary well?

17 A. He knew Mary very well. He used to -- when she  
18 was working, he picked her up from, you know, work, or  
19 brought her to work, or picked her up from school. You  
20 know, he brought her shopping and stuff.

21 Q. What effect do you think Mary's murder has had  
22 on your dad?

23 A. It has affected him just -- that was his  
24 granddaughter, you know. And they live not too far from  
25 where we stayed, so he had more contact with my kids

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1 than he did with any of my brother's children. It was  
2 like every day, you know, things for my dad to come by,  
3 take them riding or take them in the back, you know,  
4 chickens and a barn in the back. And my dad had his  
5 chickens and everything else back there. So he'd take  
6 them back there and let them feed them, let them help  
7 him feed the chickens and everything else.

8 Q. How about your mom, Mr. Carmouche? What effect  
9 has it had on Mary's death (sic)?

10 A. She took it real hard. She couldn't attend the  
11 funeral or the wake. Her blood pressure went up so  
12 high, they were wanting to hospitalize her but she  
13 wouldn't go. My sister, the same problem. She got real  
14 sick. My wife --

15 Q. Tell the jury, Mr. Carmouche, what effect it's  
16 had on your wife now that Mary's gone.

17 A. It has affected her mentally and physically.  
18 She lost a lot of weight, about thirty-five -- she  
19 wasn't big anyway. She lost about thirty-five pounds.  
20 She goes into, I guess what you call, depression stages.  
21 She would go in her room two or three days and just stay  
22 in the bed. She'll keep dwelling on, if Mary would have  
23 only turned around when she called her. I believe  
24 that's the most part that's bothering her now, is she  
25 was the last one to see her go out to her car, or to her

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1 window as she seen her leaving. And that's the point I  
2 think -- and all this time of not knowing, you know,  
3 who -- what happened, or how it happened, and a lot of  
4 the, did she suffer? You know. And last week,  
5 Thursday, she had to leave court, because she couldn't  
6 take it anymore. She hadn't been able come back.

7 Q. How is the way your wife is now -- how has that  
8 affected your children?

9 A. Well, I guess the little ones really don't  
10 understand what's wrong with, you know, with her all the  
11 way. But my older children do. I said -- I tried to  
12 explain to them what was wrong. It's just, they kind of  
13 understand, you know, that mommy still is grieving over  
14 Mary.

15 Q. How has this affected your marriage between you  
16 and your wife?

17 A. It has turned it upside down. You know, it's  
18 not -- well, my family life, my marriage, nothing is the  
19 same, you know. Even, you know, when I'm outside, it's  
20 not the same. It's never going to be the same. You  
21 just try to get on with it and try to do as best as  
22 possible between trying to get the kids and trying to go  
23 back to as normal, as close to what we used to do, to  
24 try to keep them off of it as much as possible.

25 Q. Are you -- when can you grieve? I mean, when

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1 are you ever alone to grieve about your daughter?

2 A. I guess late at night; or sometimes I walk to,  
3 you know, the barn in back and lay there; because I love  
4 to wait till they go to sleep, or while they're not  
5 there, or that they will follow me. Late at night was  
6 about the only time.

7 Q. Do you share that with your wife, or do you try  
8 to keep it away from her because of the condition she's  
9 in now?

10 A. No. I shared it with her. She goes -- you  
11 know, we discussed it and stuff. And she was asking me  
12 why wasn't it bothering me? So -- but I had to tell  
13 her, you know, it is hurting me just as much as it's  
14 hurting her. Mary was my daughter, too. I raised her,  
15 you know. That's what I told her. I sit here and  
16 remember when we first went out on the boat, when she  
17 was a baby sitting on my lap, driving the steering  
18 wheel, first time I ever took her fishing and swimming.  
19 So I remember all of that. So, then, we have all of  
20 these videos, you know, everything of holidays, you  
21 know, stacked up under -- under the TV, you know. But  
22 you have to look at it in another way. I still have the  
23 other children to take care of. They still need us  
24 every day, you know; and you have to look at that, too,  
25 because both of us can't fall apart.

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1 Q. Thank you, sir.

2 MS. CONNORS: I'll pass the witness, Your  
3 Honor.

#### 4 CROSS-EXAMINATION

5 BY MR. HILL:

6 Q. Mr. Carmouche, I don't want to prolong the  
7 agony of you having to come down here and having to  
8 relive the tragedy of your daughter's death. You've  
9 given us a lot of detail about how this has affected  
10 you. Nothing can replace Mary. I want to know, if I  
11 can -- and I guess that's possibly part of the biggest  
12 problem as a parent. We do everything we can to make  
13 sure our children make good choices, and sometimes they  
14 don't. Were these guys that she was hanging out with  
15 that you want her not to be associating with -- how did  
16 you first become aware of that?

17 A. Dion had never approached our house as any of  
18 Mary's other friends had. He would never ring the  
19 doorbell, How are you doing, Mr. Carmouche?

20 Q. I'd like to take your daughter out?

21 A. Yeah, something like that. No, I never seen  
22 him, no. The first time I laid eyes on him was Monday,  
23 when the trial started.

24 Q. Okay. Had you seen that car, this car before,  
25 the blue Lexus?



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1 A. Twice.

2 Q. You know, what are you and your wife talking  
3 about it with each other? What's going on? Why are  
4 these boys -- they're absolutely much older than your  
5 daughter?

6 A. That was my first concern. And just being a  
7 Lexus, you know, what does he do?

8 Q. Did Mary and you ever talk about that? Did  
9 she ever share with you what these guys did, or why they  
10 were driving a Lexus when they were in their twenties?

11 MS. CONNORS: Judge, I object to the  
12 relevance and hearsay.

13 THE COURT: You can answer yes or no.

14 THE WITNESS: Can you repeat the question?

15 Q. (BY MR. HILL) Yeah. Would you talk to Mary  
16 about who these boys were in the Lexus and things like  
17 that?

18 A. Yep.

19 Q. And for how long a period of time were you  
20 having to talk to her about that?

21 A. Oh, that was over a couple of months, two or  
22 three months.

23 Q. The people that attended her funeral, that's a  
24 tremendous outpouring for her. Were these all family  
25 members, or how did it come to have so many people?

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1 A. It was all of the teachers and students that  
2 knew her from Barbara Jordan. It was all of the friends  
3 from Kashmere Senior High. It was Leticia's friends  
4 from M.N.I. and the high school she went to. It was my  
5 son's friends, family, neighbors, people I worked with,  
6 and the city, and just --

7 Q. It just kept growing?

8 A. It just kept coming, you know.

9 Q. Was that comforting to you, though?

10 A. Yeah, comforting, and it shocked everybody  
11 else. We didn't know that many people was going to --

12 Q. Has this guy, Dion Holley or Kevin Walter, ever  
13 called upon you to offer --

14 A. None.

15 Q. Thank you, sir.

16 MR. HILL: I have no further questions.

17 MS. CONNORS: I have no further questions,  
18 Your Honor.

19 THE COURT: What says the State?

20 MS. CONNORS: Your Honor, the State of  
21 Texas rests its case.

22 THE COURT: What says the defense?

23 MR. HILL: May we approach for a moment?

24 THE COURT: Yes.

25 (At the bench:)

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1 MR. HILL: On behalf of the defendant, we  
2 make a motion for an instructed verdict, asking the  
3 Court to instruct the jury that at this point they  
4 should find Question Number One to be no and Question  
5 Number Two to be yes based upon the evidence. At this  
6 point we ask the Court instruct the jury to make those  
7 two findings at this point.

8 THE COURT: Your request is denied.

9 (Continuing in the jury's hearing:)

10 MR. HILL: Actually, Judge, while Kurt is  
11 not here, Your Honor, at this time the State and the  
12 defense have a stipulation of evidence regarding  
13 disciplinary reports and classification records, both  
14 from the Harris County Sheriff's Department and also the  
15 Lafayette Parish Sheriff's Department. State and the  
16 defense stipulated that if Captain Statler  
17 (phonetically) from the Harris County Sheriff's  
18 Department were to be called to testify in front of the  
19 jury, he would testify he reviewed the records of the  
20 Harris County Sheriff's Department from the jail, where  
21 Mr. Mamou has been confined pending this trial, and that  
22 there are no records of any disciplinary action or any  
23 problems as reflected in Defendant's Exhibit No. 11.  
24 And also, the information has been supplied by Lafayette  
25 Parish Sheriff's Department, also reflecting that they

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1 conducted the search regarding Mr. Mamou while he was in  
2 custody at the Lafayette Parish Sheriff's Department.  
3 And, likewise, there were no disciplinary reports  
4 written up on Mr. Mamou.

5 MR. MCCLELLAN: That is the State's  
6 stipulation, and we have no objection to Defendant's  
7 Exhibit --

8 THE COURT: Defense 10 and 11 are  
9 admitted.

10 MR. WENTZ: At this time we would call Dr.  
11 Quijano.

12 THE COURT: Proceed, please.

13 DR. WALTER QUIJANO,  
14 having been first duly sworn, testified as follows:  
15 DIRECT EXAMINATION

16 BY MR. WENTZ:

17 Q. Good afternoon. Would you tell the jury your  
18 name, please?

19 A. My name is Walter Quijano.

20 Q. And could you tell us how you were employed,  
21 please?

22 A. I am a clinical psychologist in private  
23 practice.

24 Q. Where is your office, please?

25 A. In Conroe, Texas.

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1 Q. And could you tell -- give us the benefit of  
2 your educational background?

3 A. I have a bachelor's degree in general  
4 psychology, a master's degree in clinical psychology,  
5 and a doctorate degree in clinical psychology.

6 Q. What schools are those degrees from?

7 A. The bachelor's degree is from a university in  
8 the Philippines, the University of San Carlos. My  
9 graduate degrees, master's and doctorate, were from the  
10 University of Hawaii.

11 Q. Are you licensed to practice psychology in the  
12 State of Texas?

13 A. Yes.

14 Q. And could you tell us a few of your -- the  
15 organizations that you belong to?

16 A. The American Psychological Association, Texas  
17 Psychological Association, Association for the  
18 Advancement of Behavior Therapy, and American  
19 Correctional Psychologists Association.

20 Q. Besides being in private practice, have you  
21 ever been employed by the State of Texas?

22 A. Yes.

23 Q. And in what capacity, please?

24 A. I was employed by the State of Texas as a staff  
25 psychologist in 1977, doing chemical dependency work at

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1 the then Texas Department of Corrections. In 1983 to  
2 '88 or '89, I came back to be their chief psychologist  
3 for the Texas Prison System and the director of their  
4 psychiatric services. I do some work with other  
5 departments of the State of Texas, doing contract work  
6 with Texas Rehabilitation Commission, both the  
7 disability as well as the vocational side. I do work  
8 for C.P.S., and I do work for T.D.C.J.I.D., the new name  
9 for the prison system, doing competency evaluations for  
10 mentally ill inmates who commit acts of violence in the  
11 prison. And I do evaluations for them to determine  
12 imminent dangerousness for sex offenders who are about  
13 to be released.

14 Q. Dr. Quijano, during the period of time that you  
15 were specifically working with the Texas Department of  
16 Criminal Justice -- and I'm going to refer to it by that  
17 name -- did you become familiar with the procedures that  
18 they had for handling inmates?

19 A. Yes.

20 Q. Were you familiar with the facilities that they  
21 had for handling inmates?

22 A. Yes.

23 Q. And since you have left their regular  
24 employment and are working in the capacity that you are  
25 now, do you continue to be familiar with the procedures

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1 that they have for handling inmates in the Texas  
2 Department of Criminal Justice?

3 A. Yes.

4 Q. And do you continue to be familiar with the  
5 facilities they have for handling inmates in the Texas  
6 Department of Criminal Justice?

7 A. Yes.

8 Q. Can you tell us, what is the goal of the Texas  
9 Department of Criminal Justice?

10 A. The goal is to keep the inmates who are sent  
11 there for the various crimes to protect society and do  
12 so in a safe manner, safe for the other inmates, as well  
13 as safe for the civilian staff.

14 Q. Are they equipped and capable of handling  
15 capital murder inmates who receive life sentences?

16 A. Yes.

17 Q. Does the Texas Department of Criminal Justice  
18 have the means and resources to meet their goals in  
19 handling inmates to minimize their violence?

20 A. Yes.

21 Q. Can you tell us some of the manners in which  
22 they go about minimizing the violence of the inmates  
23 while they are in the Texas Department of Criminal  
24 Justice?

25 A. First technique is to classify an inmate's --

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1 Q. What is classification?

2 A. Classification is a process by which all  
3 incoming inmates are reviewed by a multidisciplinary  
4 team made up of security experts, education, medical,  
5 psychological, even dental experts to decide what level  
6 of security a person needs and which prison unit he  
7 should be assigned to.

8 Q. What types of things do they consider in  
9 classifying an inmate who goes to the Texas Department  
10 of Criminal Justice?

11 A. They consider many things, including the age of  
12 the inmate, the physical size of the inmate, the look of  
13 the inmate, whether or not they have a baby face look.

14 Q. Why do they consider that?

15 A. Well, because those with the smaller stature  
16 and more babyish look are potential victims; and so,  
17 they need to be isolated and separated from the general  
18 population.

19 Q. What other things do they consider in the  
20 classification process?

21 A. The behaviors of the inmates in the jail or  
22 previous institutions, the crimes they are convicted of,  
23 their other needs, their medical, psychological, dental,  
24 educational, as well as work needs.

25 Q. Why do they consider prior jail performance in

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1 the classification procedure?

2 A. It gives them an idea of how a person will  
3 behave under a structured setting. A person in the jail  
4 that may have escape attempts or violent behaviors, they  
5 would be more careful and give the person higher  
6 security level.

7 Q. Are the people in the classification department  
8 able to consider outside information, such as from the  
9 community itself?

10 A. Yes. They review whatever the Court sends  
11 them, whatever the jail sends them. And whichever  
12 information that may come with their packet. They have  
13 personnel who can call to check on information that may  
14 be missing in the packet, which they may need to  
15 classify him accurately.

16 Q. Do they attempt to identify those individuals  
17 who may be more at risk of being violent or creating  
18 trouble?

19 A. Yes.

20 Q. And what things do they consider in looking at  
21 that risk factor?

22 A. You have things like gang involvement, the  
23 history of drug abuse, substance abuse, their  
24 performance in the jail or other institutions, and just  
25 their demeanor during the interview process.

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1 them are housed in two person cells, again, depending on  
2 the need. Some may be a single cell, but most people  
3 would be in a closed custody cell, where they will stay  
4 in the cell unless they have specific activities to do  
5 work or go to the infirmary. Otherwise, they are in  
6 their cell most of the time, allowed to do some  
7 recreation, one hour or two hours a day, plus authorized  
8 activities. After six months, then they will have more  
9 freedom to go do authorized activities.

10 Q. Where are the individuals who are even greater  
11 risk factors sent?

12 A. Those that are predicted to be eminently  
13 assaulted or imminently to be victimized are sent to an  
14 area called administrative segregation. There is a  
15 section of that that is for assaultive inmates and  
16 another section for what we call protection inmates.  
17 Those are high security where they are housed in single  
18 cells with solid doors with a small food slot, and their  
19 interaction with other people is minimized. They go out  
20 to recreate one or two hours a day, but they recreate in  
21 a small cage by themselves. They're not allowed to  
22 interact with other inmates.

23 Q. And even within a super segregation unit, are  
24 there different levels?

25 A. Then there are levels. Of course, there are

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1 Q. When individuals are found to have some of  
2 these risk factors, what is the influence or what is the  
3 consequence for their classification in the Texas  
4 Department of Criminal Justice?

5 A. Well, most inmates would be classified  
6 initially as a closed custody inmate. They have the  
7 option of increasing the security by assigning them to  
8 more structured, more secured cells. So if there is a  
9 need to increase the security up front, they will do so.  
10 If not, they will be observed for six months or so under  
11 what they call a close custody situation, and then  
12 decrease the security or increase the security,  
13 depending on how they have all done.

14 Q. If an individual is not gang-related or doesn't  
15 have a history of being involved in gangs, is that a  
16 factor that makes them more or less likely to be a risk  
17 within T.D.C.?

18 A. That would be a factor that we would predict  
19 less danger in T.D.C. Most of the violence in T.D.C.,  
20 especially the more serious and fatal violence, are drug  
21 and gang-related.

22 Q. Where are the most risk likely inmates sent  
23 after the classification process?

24 A. Most of them are assigned to what is called  
25 medium -- not medium -- closed custody. And most of

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1 those who are there for protection. They're there for  
2 being assaulted. And those who are there for protection  
3 who don't behave, and those who are there for being  
4 assaulted but don't behave. So we have levels of  
5 privilege within the high security unit.

6 Q. When an inmate does get to a unit ultimately  
7 after having gone through the classification process,  
8 after having gone through this six-month interval, on  
9 some occasions does the local unit have any further  
10 discretion in determining how that particular inmate is  
11 going to be housed or classified?

12 A. The inmates first go to a place called  
13 diagnostic unit or a reception unit. Their security  
14 committee decides on the security level. Once the  
15 inmate hits a particular unit, that unit has its own  
16 level security committee that decides if the level is  
17 appropriate or not or whether they can control the  
18 inmate or not. So that is reviewed, and then the local  
19 decision holds, unless there are certain laws that  
20 govern a place. They cannot, of course, overrule that.

21 Q. And can an inmate's classification be changed  
22 at any time based on whether or not they are acting bad  
23 or acting good?

24 A. The classification security level is always  
25 monitored and can be adjusted-up or down anytime. Once

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1 there is a suspicion that it needs to be increased, the  
2 person is immediately held; and they can decide what to  
3 do, so they restrain them first and then decide what to  
4 do next.

5 Q. Besides classification, when an inmate enters  
6 into the Texas Department of Criminal Justice, are there  
7 physical means for controlling the inmate and reducing  
8 the likelihood of dangerousness? What type of physical  
9 controls do they have for inmates in terms of  
10 controlling your behavior?

11 A. The most obvious is, of course, the kinds of  
12 cells you are assigned to. You can be assigned to a  
13 dormitory on one end to a two-person cell with bars, to  
14 a one-person cell with bars, and then to administrative  
15 segregation with one person with solid doors. And now  
16 we have new units called high security, which is even  
17 tighter than the administrative segregation. So the  
18 first obvious physical control is the kind of cells  
19 you're assigned to.

20 The second one is whether or not you  
21 can -- if you are let out -- you can get out of the  
22 cell, but only inside the building. There are people  
23 who are, like, out of the building but inside the fence;  
24 and there are people who are out of the fence. Then  
25 there is a decision whether you are -- if you are

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1 supervised -- whether you need an armed guard to  
2 supervise you or unarmed guard. So there are many  
3 levels of control. There is the normal tools, the  
4 batons, if you have a riot, equipment, spray guns,  
5 pepper foggers, many things to forcibly make an inmate  
6 comply if it gets to that point.

7 Q. Now an inmate who has been convicted of capital  
8 murder and who might receive a sentence of life  
9 imprisonment would go through that classification  
10 process that you've just described; is that correct?

11 A. Yes.

12 Q. And then he would be subject to classification  
13 or sent to whatever facility was deemed appropriate?

14 A. Yes.

15 Q. And even though once he arrives at that  
16 facility, he would be subject to the scrutiny of the  
17 facility where he is sent?

18 A. Yes.

19 Q. And his placement could be further altered from  
20 there?

21 A. Yes.

22 Q. It could be made more restrictive for him if  
23 that is what they deem appropriate?

24 A. Yes.

25 Q. So is there a likelihood that individuals

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1 classifying people and housing people err on the side of  
2 caution?

3 MR. MCCLELLAN: I object, Your Honor.

4 It's calling for speculation as to how it would apply to  
5 any person.

6 THE COURT: Rephrase it, please.

7 Q. (BY MR. WENTZ) You've talked about the housing  
8 situation and how they go about housing inmates. Are  
9 the inmates also subject to prison rules?

10 A. Oh, of course.

11 Q. Do these rules tend to be more restrictive than  
12 a civilian population?

13 A. These rules are rigid, and the suspicions of  
14 violation of the rules leads to immediate detention.  
15 You are detained first, and you're investigated. Unlike  
16 in the free community, you're investigated and then  
17 detained. So they're very safety first. So you're  
18 detained, you're investigated. If you are found not to  
19 have violated, you're left to your security level. If  
20 they are found guilty, of course, your level is  
21 increased.

22 Q. Could you give us an example of some of the ways  
23 in which the rules under which an inmate may live are  
24 more restrictive than the rules of which you and I have  
25 to live? For example, what is considered contraband in

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1 the Texas Department of Criminal Justice?

2 A. There are things considered dangerous, so  
3 they're not allowed. Of course, drugs, alcohol, and any  
4 type of weapon, anything that you don't -- is  
5 unauthorized. If you have two pillows versus one  
6 pillow. That is contraband. Anything that you have  
7 more than authorized. If you was supposed to have taken  
8 it in the morning and kept it for the afternoon, that's  
9 considered a contraband. So they'd like to consider  
10 what the inmates -- or what they have and what they do.

11 Q. Do the inmates have the same rights as you and  
12 I have, such as with regards to guards searching their  
13 property or their person?

14 MR. MCCLELLAN: Your Honor, I would object  
15 to what relevance this would have to any issue before  
16 this jury.

17 THE COURT: I'm going to allow it.

18 THE WITNESS: Those are done randomly as a  
19 safety precaution. It's also done with -- for suspicion  
20 of maybe possession of a contraband, or there is a  
21 suspicion that the person is hiding something. So they  
22 would run up and search, if there is a reason to.

23 Q. (BY MR. WENTZ) In addition to the housing, in  
24 addition to the security rules, the watchfulness of the  
25 guards, are there other physical means for dealing with



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1 inmates who may misbehave in prison, such as the force  
2 that a policeman might use in civilian society? Are  
3 guards also allowed to use physical force?

4 A. If need be. Of course, verbal intervention is  
5 the first attempt. But the officers are allowed to use  
6 force. And there is a policy that you have to find  
7 out -- they have a team for special difficult  
8 circumstances. They have to retain the whole thing to  
9 show no use of excessive force. But force is allowed,  
10 and they are given the necessary equipment to subdue the  
11 inmates.

12 Q. And are the guards specifically trained to  
13 handle these inmates?

14 A. Yes.

15 Q. They're there to deal with them?

16 A. Yes.

17 Q. Are there also rehabilitative services  
18 available to help control the inmates?

19 A. Yes. In the restraints and the negative  
20 restraints of their rules and supervision, there are  
21 opportunities for inmates. You have medical services,  
22 psychological services, educational services, vocational  
23 training, so they can spend their time constructively.  
24 Their tendency to act and behave is controlled by  
25 supervision and physical means. You also hope there is

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1 change for the better once the propensity to misbehave  
2 is suppressed.

3 Q. Any benefits or any positive improvements that  
4 a -- an inmate might receive while in the Texas  
5 Department of Criminal Justice be taken away, such as  
6 some of the services they received, if they misbehave?

7 A. All the benefits are earned. They are not  
8 rights. You are entitled to food, a magazine, and  
9 shelter. Anything beyond that you have to earn and can  
10 be removed if you don't follow the rules or misbehave.

11 Q. If you know, how long must an inmate convicted  
12 of capital murder and sentenced to life in October of  
13 1999 serve before they might become eligible for parole?

14 A. The law requires they serve at least forty  
15 years, and then they can begin to apply for a parole.

16 Q. Is that forty consecutive years?

17 A. Yes.

18 Q. Now you've spoken to us a lot about prison and  
19 the means in which they go about placing, housing,  
20 controlling inmates, and reducing the risk or likelihood  
21 for risk of violence. From your experience as a  
22 psychologist, can you tell us, does aging have any  
23 effect upon any individual's actions as they grow older?

24 A. It's the same predictor for violence. It's the  
25 only technique we have to really control violence. And

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1 that is, the propensity for violence is highest in late  
2 teens and into late twenties, and of that, the  
3 propensity for violence decreases to the point that  
4 people fifty or older constitute less than one percent  
5 of violent acts.

6 Q. Is this maturation aging process applied  
7 equally to individuals who have been found guilty of  
8 crimes, as well as for individuals who have never been  
9 found guilty of anything?

10 A. Yes, that's -- aging applies to all of us.

11 Q. And this aging process, if the person is  
12 removed from a risk factor that they might have  
13 encountered in civilian society, such as drugs, such as  
14 violent atmosphere, does this also affect or better the  
15 aging process in order to reduce likelihood of violence?

16 A. That is the intent in prison, so that as you  
17 age, the person (inaudible) the dangerous behaviors to  
18 allow whatever positive (inaudible.) NOTE: (Witness was  
19 asked to repeat answer but did not.)

20 Q. How does this aging process come about with  
21 individuals? What specific things, just the passage of  
22 one day to the next, causes those changes to come about  
23 in an individual?

24 A. Of course, the brain changes and our hormones  
25 change. We have less hormones when we grow older and

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1 among men who are responsible for most of the violence.  
2 Depends on the decrease in testosterone. And so you see  
3 old age as a very important factor in the decrease or  
4 increase of violence.

5 Q. Overall, from your experience, who is apt to be  
6 the more better behaved inmate, the long-term inmate or  
7 the short-term inmate?

8 A. As a rule, what we call lifers behave better in  
9 prison than those who have shorter sentences.

10 Q. Can you tell us or explain why?

11 A. Well, the shorter sentences normally belong to  
12 first offenders, younger people; and the longer  
13 sentences, of course, for generally more serious crimes.  
14 And older people, if you're sent there for life, you  
15 have to, in your manipulative way, have to survive, get  
16 along in a sense. So it's to your advantage to adjust  
17 very quickly and find your place in the system. The  
18 people with life are also generally more serious  
19 offenders; murders, things like that. And they don't  
20 have to prove themselves to the other inmates that they  
21 are, quote, "men," because they have that badge. In a  
22 sixth sense, they have that badness. And many times,  
23 younger inmates have to prove that to other inmates so  
24 that they won't be attacked, and they don't need to do  
25 that.